strategy that can strengthen a State's ability to serve its most vulnerable populations and is a practice encouraged by § 98.50 of the final rule. Lead Agencies can use such a strategy to target resources while also remaining consistent with the spirit of McKinney Vento Act's "Prohibition on Segregating Homeless Students," which says that States shall not segregate such child or youth in a separate school, or in a separate program within a school, based on such child's or youth's status as homeless (42 U.S.C. 11434a, Section 722(e)(3) Subtitle VII–B).

Subpart F—Use of Child Care and Development Funds

Subpart F of CCDF regulations establishes allowable uses of CCDF funds related to the provision of child care services, activities to improve the quality of child care, administrative costs, Matching fund requirements, restrictions on the use of funds, and cost allocation.

§ 98.50 Child Care Services

This final rule specifies that paragraph (a), as re-designated, is describing use of funds for *direct* child care services. This clarifies that the reference to "a substantial portion of funds" at paragraph (g), as re-designated, applies to direct services, as opposed to other types of activities.

Section 658G(a)(2) of the Act increases the percentage of total CCDF funds (including mandatory funding) that Lead Agencies must spend on activities to improve the quality of child care services. Paragraphs (b), (d), (e), and (f), respectively, require Lead Agencies to spend a minimum of nine percent of funds (phased in over five years) on activities to improve the quality of care and three percent (beginning in FY 2017) to improve the quality of care for infants and toddlers; not more than five percent for administrative activities; not less than 70 percent of the Mandatory and Matching funds to meet the needs of families receiving TANF, families transitioning from TANF, and families at-risk of becoming dependent on TANF; and, after setting aside funds for quality and administrative activities, at least 70 percent of remaining Discretionary funds on direct services.

Grants and contracts. In the NPRM, ACF proposed to revise § 98.50(a)(3) to require States and Territories to use at least some grants and contracts for the provision of direct services, with the extent determined by the Lead Agency after consideration of shortages of supply of high-quality care and other factors as determined by the State. However, based on feedback from some members of Congress, States, and other stakeholders, we have chosen not to keep the proposed change to require the use of some grants or contracts and are making no changes to § 98.50(a)(3), as re-designated. While this final rule does not require States and Territories to use grants and contracts for direct services, we strongly encourage Lead Agencies to use grants and contracts to address the limited supply of high-quality child care options. They are a critical aspect of an effective CCDF system, and using grants and contracts in combination with certificates can play a role in building the supply and availability of child care, particularly high-quality care, for underserved populations and areas., While the majority of States and Territories rely solely on certificates to provide child care assistance to eligible families, Some States and Territories have reported in their CCDF Plans using grants and contracts to increase the supply of specific types of child care. These include contracts to fund programs to serve children with special needs, targeted geographic areas, infants and toddlers, and school-age children. Grants and contracts also are used to provide wrap-around services to children enrolled in Head Start and prekindergarten to provide full-day, full-year care and to fund programs that provide comprehensive services. Additionally, Lead Agencies report using grants and contracts to fund child care programs that provide higher-quality child care services.

Comment: We received a strong response to the proposed requirement. States and faith-based and private education organizations were strongly opposed, arguing it would inhibit State flexibility and parental choice and went against the intent of the Act. For example, one State said, "States understand the child care environment in which they operate. It may not always be the case that establishing grants or contracts is an effective way to increase access to quality care". Another said, "Each State and local area should have the flexibility to offer direct child care services through the use of certificates only". In addition, a letter from Senator Alexander and Congressman Kline said "Requiring the use of grants or contracts by States and Territories, limiting parents' ability to directly select the provider right for their family, is concerning as it reduces options, restricts parental choice, diminishes local control, and requires States to substantially change their operating procedures, as well as directly contradicts congressional intent." Specifically commenters said it violated the intent of Section 658Q(b) of the CCDBG Act which says nothing in this subchapter shall be construed in a manner (1) to favor or promote the use of grants and contracts for the receipt of child care services under this subchapter over the use of child care certificates; or (2) to disfavor or discourage the use of such certificates for the purchase of child care services, including those services provided by private or non-profit entities, such as faith-based providers.

Response: As discussed earlier, we have chosen not to keep the proposed requirement to use at least come grants and contracts for direct services. The proposed requirement to use grants and contracts was not meant to limit or discourage the use of certificates to provide assistance to families. However, after considering feedback from some members of Congress, States, and other stakeholders, we have chosen to not to change the regulatory language at § 98.50(a)(3), as re-designated, giving States and Territories the ability to choose whether or not they use grants or contracts to provide direct services.

Comment: Numerous national organizations and child care worker organizations supported the use of grants and contracts to build the supply of high-quality care, stating "Grants and contracts can be an effective means of ensuring that child care providers have the stable funding that they need to meet high-quality standards." In addition, a comment submitted by a group of child care resource and referral agencies said, "the use of contracts expands the choices for care that parents have by ensuring low-income families have access to higher quality care."

Response: While this final rule does not require the use of grants and contracts for direct services, we continue to think a system that includes certificates, grants or contracts, and private-pay families is the most sustainable option for the CCDF program and for child care providers. Certificates play a critical role in supporting parental choice; however, demand-side mechanisms like certificates are only fully effective when there is an adequate supply of child care. Multiple research studies have shown a lack of supply of certain types of child care and for certain localities. Child care supply in many low-income and rural communities is often low, particularly for infant and toddler care, school-age children, children with disabilities, and families with non-traditional work schedules.

Grants or contracts can play a role in building the supply and availability of child care, particularly high-quality care, in underserved areas and for special populations in order to expand parental choice. For example, Lead Agencies may use grants or contracts to incentivize providers to open in an area they might not otherwise consider, or to serve children for whom care is more costly. Grants and contracts are paid directly to the provider so long as slots are adequately filled, which is a more predictable funding source than vouchers or certificates. Stable funding offers providers incentive to pay the fixed costs associated with providing high-quality child care, such as adequate salaries to attract qualified staff, or to provide higher cost care, such as for infants and toddlers or children with special needs, or to locate in low-income or rural communities.

If a Lead Agency chooses to use grants and contracts to provide direct services, we recommend considering the ability of the child care market to sustain high-quality child care providers in certain localities for specific populations. Grants and contracts may help lessen the effects of larger economic changes that may impact the child care market. A recession may cause high-quality child care centers to close. However, because of the significant start-up costs associated with establishing a high-quality child care facility, the supply of child care may take longer to return to the market, making it difficult for parents to find child care. Contracting slots during a recession helps to preserve access to high-quality child care for low-income families and stabilize the income of providers, helping them survive the recession and continue to benefit the community. (Warner, M., *Recession, Stimulus and the Child Care Sector: Understanding Economic Dynamics, Calculating Impact,* 2009) Grants or contracts can also be used to support two-generation programs for community college students, teen parents, or meet other State priorities such as for homeless children. Finally, grants or contracts can improve accountability by giving the Lead Agency more access to monitor a child care provider's compliance with health and safety requirements and appropriate billing practices.

When considering whether to use grants or contracts, Lead Agencies are encouraged to contract with multiple types of settings, including child care centers and staff family child care networks or systems. Family child care networks or systems are groups of associated family child care providers who pool funds to share some operating and staffing costs who provide supports to providers often to manage their businesses and enhance quality. Contracting directly with family child care networks allows for more targeted use of funds with providers that benefit from additional supports that may improve quality. Research shows affiliation with a staffed family child care network is a strong predictor of quality in family child care homes, when providers receive visits, training, materials, and other supports from the network through a specially trained coordinator. (Bromer, J. et al., *Staffed Support Networks and Quality in Family Child Care: Findings from the Family Child Care Network Impact Study,* Erikson Institute, 2008)

Expenditures on activities to improve the quality of child care. Both the quality activity set-aside and the set-aside for infants and toddlers at § 98.50(b) apply to the State and Territory's full CCDF award, which includes Discretionary, Mandatory, and Federal and State shares of Matching funds. Non-Federal maintenance-of-effort funds are not subject to the quality and infant and toddler set-asides. These amounts are minimum requirements. States and Territories may reserve a larger amount of funding than is required at paragraphs (b)(1) and (2) for these activities. Note that the phase-in of the increase in the quality set-aside at § 98.50(b) only applies to States and Territories. The regulatory language at § 98.50(b) provides that the quality expenditure requirement is out of the aggregate amount of funds expended *by a State or Territory.* The phase-in and applicability of the quality set-aside for Tribal grantees is at § 98.83(g) and discussed in Subpart I of this final rule.

This final rule at § 98.53(c) lays out specific requirements related to the quality activities funds. First, this rule requires the use of the quality funds to align with an assessment of the Lead Agency's need to carry out such services. As part of this assessment, we expect Lead Agencies to review current expenditures on quality, assess the need for quality investment in comparison with revised purposes of the Act, including the placement of more low-income children in high-quality child care, and determine the most effective and efficient distribution of funding among and across the categories authorized by the Act. Second, the activities must include measurable indicators of progress in accordance with the requirement at § 98.53(f). We recognize some activities may have the same indicators of progress. However, each activity must be reported on and linked to some indicator(s). Finally, this rule allows for quality activities to be carried out by the Lead Agency or through grants and contracts with local child care resources and referral organizations or other appropriate entities.

Comment: Commenters were supportive of the proposed provisions related to quality expenditures. One State asked for clarification about what the assessment must entail, and a few other commenters asked for clarification about whether the assessment of quality activities had to be done on an annual basis. One comment signed by several national organizations expressed concern that an annual assessment would be a burden for Lead Agencies and overlook the fact that "quality improvement strategies are often multi-year initiatives and in many cases areas targeted for improvement will not change dramatically from year to year."

Response: Lead Agencies have the flexibility to design an assessment of quality activities that best meets their needs, including how often they do the assessment. We recommend, but do not require, it be done at least every three years to support the CCDF State Plan. We also recommend Lead Agencies include measures and outcomes when quality investments are made to facilitate assessment and ensure that funds are used in an intentional and effective manner.

Comment: A national organization suggested the regulation include a set-aside to improve the quality of care for school-age children and programs.

Response: School-age care is critical to meeting the needs of working families, and we strongly support Lead Agencies continuing to invest quality funds into activities that improve the school-age programs. The allowable quality activities continue to provide opportunities for Lead Agencies to invest in improving the quality of care for school-aged children. However, as the CCDBG Act of 2014 did not include a permanent set-aside for school-age quality activities, we decline to require such a set-aside in this final rule.

Comment: Faith-based and private education organizations requested we revise the regulatory language to require that quality funds be used "in a manner that accommodates a variety of distinctive approaches to early childhood education, such as faith-based, Montessori, and Waldorf programs."

Response: We declined to add this to the regulatory language. Lead Agencies may choose to follow those parameters when deciding how to spend their quality funds, but we do not want to limit their flexibility by including

additional requirements related to their quality funds. Further, regulatory language at § 98.53(a)(3)(vii) related to the use of quality funds for QRIS or other systems of quality indicators already provides for funds to be used in a way that "accommodate a variety of distinctive approaches to early childhood education and care, including but not limited to, those practices in faith-based settings, community-based settings, child-centered settings, or similar settings that offer a distinctive approach to early childhood development." It is more appropriate to include this requirement under the QRIS activity than as a general requirement related to quality spending. We have kept the proposed regulatory language.

Funding for Direct Services. At § 98.50, this final rule includes a technical change at paragraph (e) to clarify that the provision applies to the Mandatory and Federal and State share of Matching funds. This change simply formalizes previously existing policy. Paragraph (h) has been re-designated without changes.

Paragraph (f) incorporates statutory language and requires Lead Agencies to use at least 70 percent of any Discretionary funds left after the Lead Agency sets aside funding for quality and administrative activities to fund direct services.

This final rule includes a technical change at § 98.50(g), as re-designated, that requires Lead Agencies to spend a substantial portion of the funds remaining after applying provisions at paragraphs (a) through (f) of this section to provide *direct* child care services to low-income families who are working or attending training or education.

Comment: We received one comment asking for clarification about how the change at paragraph (g) might impact services for certain groups, including "children categorized as protective service cases (for CCDF purposes) whose parents are not working or in education or training."

Response: The provision at paragraph (g) is a long standing regulatory requirement based on statutory language. The proposed clarification that the funding apply to *direct services,* which has been retained in this final rule, is based on previously existing policy, and we do not expect it to have an impact on how Lead Agencies deliver services. We did not receive other comments on these provisions and have kept the proposed regulatory language.

§ 98.51 Services for Children Experiencing Homelessness

This final rule includes a new section at § 98.51 that reiterates new statutory language at 658E(c)(3)(B)(i) of the Act, which requires Lead Agencies to spend at least some CCDF funds on activities that improve access to quality child care services for children experiencing homelessness. This requires Lead Agencies to have procedures for allowing children experiencing homelessness to be determined eligible and enroll prior to completion of all required documentation.

The final rule also clarifies that if a child experiencing homelessness is found ineligible, after full documentation, any CCDF payments made prior to the final eligibility determination will not be considered errors or improper payments and any payments owed to a child care provider for services should be paid. Lead Agencies are expected to provide training and technical assistance on identifying and serving children and families experiencing homelessness and outreach strategies.

Comment: Commenters were very supportive of this new section on services to children experiencing homelessness. One national organization was "particularly pleased to see the clear indication that if a family experiencing homelessness is determined to be ineligible after full documentation is obtained, providers still will be paid. This is an important strategy for removing barriers to child care for this population, as many child care providers may be hesitant to accept homeless families into their program for fear of not being paid for services rendered." They were also supportive of the policy clarification that ". . . training and technical assistance is not limited to child care providers only, but is to be directed to Lead Agency staff as well. This will better ensure that children can be identified at the point of application and that administrators and policy makers are better educated on the unique needs of this population."

§ 98.52 Child Care Resource and Referral System

Section 658E(c)(2)(E) of the Act allows, but does not require, Lead Agencies to use CCDF funds for child care resource and referral services to assist with consumer education and specifies functions of such entities. Consistent with this provision, this final rule at § 98.52 incorporates statutory language that allows Lead Agencies to spend funds to establish or support a system of local or regional child care resource and referral organizations that is coordinated, to the extent determined by the Lead Agency, by a statewide public or private nonprofit, community-based or regionally based, local child care resource and referral organization.

Paragraph (b) specifies a list of resource and referral activities that should be carried out at the direction of the Lead Agency. Therefore, if the Lead Agency does not need the child care resource and referral organization to carry out a certain activity, the organization does not have to carry out that activity.

Comment: Commenters expressed support for child care resource and referral agencies and the important role they can play in helping families access child care and providing consumer education about quality child care to parents of children receiving subsidies and the general public. A national organization representing many child care resource and referral agencies recommended "the community relationships that have been built over the past decades by State and local child care resource and referral agencies can be utilized as a foundation for any initiatives designed to improve the information provided to consumers, as well as expanding the reach of the services." While most comments related to this provision were generally about the work of child care resource and referral agencies, one commenter expressed concern about language included in the proposed regulation that would give Lead Agencies discretion to decide which of the activities at paragraph (b) would be required if a Lead Agency chose to fund child care resource and referral agencies. The commenter noted, "These are important and interrelated functions. There is the possibility under the proposed regulations that States may pursue a checklist."

Response: We strongly agree with commenters that child care resource and referral organizations can play a critical role in helping parents access high-quality child care. Child care resource and referral organizations should assist Lead Agencies in meeting the expanded requirements to provide information to families and help meet the new purpose of increasing family engagement. When determining partnerships with local resource and referral agencies, we recommend Lead Agencies give consideration to the expanded requirements for consumer education at § 98.33 and how best to meet those requirements, including whether existing child care resource and referral agencies and/or additional partners can assist in reaching low-income parents of

children receiving subsidies, providers, and the general public.

The activities at paragraph (b) lay out a strong framework for how Lead Agencies and child care resource and referral agencies can work together. However, Lead Agencies need flexibility in how they choose to work with different organizations, including child care resource and referral agencies, and we have chosen to leave the regulatory language as proposed in the NPRM.

§ 98.53 Activities To Improve the Quality of Child Care

As noted above, the CCDBG Act of 2014 increased the percent of expenditures Lead Agencies must spend on quality activities. We strongly encourage Lead Agencies to develop a carefully considered framework for quality expenditures that takes into account the activities specified by the Act, and uses data on gaps in quality of care and the workforce, as well as effectiveness of existing quality-enhancement efforts, to target these resources. Lead Agencies should also coordinate quality activities with the statutory requirement to spend at least three percent of expenditures on improving quality and access for infants and toddlers, beginning in FY 2017.

Section 658G(b) of the Act includes a list of 10 allowable quality activities and requires Lead Agencies to spend their quality funds on at least one of the 10 activities. This final rule incorporates and expands on the list of allowable activities at § 98.53(a). In addition, we removed language included in the proposed rule at § 98.53(a) that said quality funds had to be used to "increase the number of low-income children in high-quality child care" and replaced it with "improve the quality of child care services for all children, regardless of CCDF receipt, in accordance with paragraph (d)." This ensures consistency with the provision at § 98.53(d) that clarifies quality activities are not restricted to CCDF children. Below we include an explanation and response to comments on the allowable quality activities.

1. *Supporting the training, professional development, and postsecondary education of the child care workforce as part of a progression of professional development.* This final rule includes professional development as an allowable quality improvement expenditure at § 98.53(a)(1). The Act references the section of the Plan requiring assurances related to training and professional development, which is elaborated in this final rule at § 98.44. We encourage Lead Agencies to align the uses of funds for training, professional development, and postsecondary education with the State or Territory's framework and progression of professional development to maximize resources. Training and professional development may be provided through institutions of higher education, child care resource and referral agencies, worker organizations, early childhood professional associations, and other entities. Additional areas for investments in training and professional development, are included with additional detail at § 98.53(a)(1)(i) through (vii) as follows:

(a) Offering training, professional development and post-secondary education that relate to the use of scientifically-based, developmentally, culturally, and age-appropriate strategies to promote all of the major domains of child development and learning, including those related to nutrition and physical activity and specialized training for working with populations of children, including different age groups, English learners, children with disabilities, and Native Americans and Native Hawaiians, to the extent practicable, in accordance with the Act.

(b) Incorporating the effective use of data to guide program improvement and improve opportunities for caregivers, teachers and directors to advance on their progression of training, professional development, and postsecondary education. We expanded upon the statutory language to include opportunities for caregivers, teachers and directors to advance professionally as there are a variety of data collected (such as information from licensing inspectors, quality rating and improvement systems, or accreditation assessments) that can guide program improvement by helping providers make adjustments in the physical environment and teaching practices.

(c) Including effective, age-appropriate behavior management strategies and training, including positive behavior interventions and support models for birth to school-age, that promote positive social and emotional development and reduce challenging behaviors, including reducing suspensions and expulsions of children under age five for such behaviors.

(d) Providing training and outreach on engaging parents and families in culturally and linguistically appropriate ways to expand their knowledge, skills, and capacity to become meaningful partners in supporting their children's positive development.

(e) Providing training in nutrition and physical activity needs of young children.

(f) Providing training or professional development for caregivers, teachers and directors regarding the early neurological development of children; and

(g) Connecting caregivers, teachers and directors of child care providers with available financial aid to help them pursue relevant postsecondary education, or delivering other financial resources directly through programs that provide scholarships and compensation improvements for education attainment and retention.

2. *Improving upon the development or implementation of the early learning and development guidelines.* We restate at § 98.53(a)(2) statutory language to allow the use of CCDF quality funds to provide technical assistance to eligible child care providers on the development or implementation of early learning and development guidelines. Early learning and development guidelines should be developmentally appropriate for all children from birth to kindergarten entry, describing what such children should know and be able to do, and cover the essential domains of early childhood development. Most States and Territories already have such guidelines, but may need to update them or better integrate them into their professional development system required at § 98.44. Section 658E(c)(G) of the Act requires Lead Agencies to describe training and professional development, including the ongoing professional development on early learning guidelines. In June 2015, ACF released the newly revised *Head Start Early Learning Outcomes Framework: Ages Birth to Five* (HSELOF, 2015). The HSELOF provides research-based expectations for children's learning and development across five domains from birth to age five. As States and Territories undertake revisions to their early learning guidelines, we encourage them to crosswalk their guidelines with the HSELOF to ensure they are comprehensive and aligned. Coordinating between State/Territory early learning and development guidelines and the HSELOF can help build connections between child care programs and Early Head Start/Head Start programs. We also encourage Lead Agencies to consider expanding learning and development guidelines for school-age children, either through linkages to programs already in place through the State department of education or local educational agencies (LEAs), or by adapting current early learning and development guidelines to

be age-appropriate for school-age children.

Developing, implementing, or enhancing a tiered quality rating and improvement system (QRIS). We incorporate this allowable activity at § 98.53(a)(3). The Act lists seven characteristics of a QRIS that Lead Agencies may choose to incorporate when developing a QRIS with quality funds, which we expand upon:

(a) Support and assess the quality of child care providers in the State, Territory, or Tribe. QRIS should include training and technical assistance to child care providers to help them improve the quality of care and on-site quality assessments appropriate to the setting;

(b) Build on licensing standards and other regulatory standards for such providers. We encourage Lead Agencies to incorporate their licensing standards and other regulatory standards as the first level or tier in their QRIS. Making licensing the first tier facilitates incorporating all licensed providers into the QRIS;

(c) Be designed to improve the quality of different types of child care providers and services. We encourage Lead Agencies to implement QRIS that are applicable to all child care sectors and address the needs of all children, including children of all ages, families of all cultural-socio-economic backgrounds, and practitioners. One way to provide support for different types of care is providing quality funds to support staffed family child care networks that can provide coaching and support to individual family child care providers to improve the quality in those settings.

(d) Describe the safety of child care facilities. Health and safety are the foundations of quality, and should not be treated as wholly separate requirements. Including the safety of child care facilities as part of a QRIS helps to reinforce this connection.

(e) Build the capacity of early childhood programs and communities to support parents' and families' understanding of the early childhood system and the ratings of the programs in which the child is enrolled. This capacity may be built through a robust consumer and provider education system, as described at § 98.33. Lead Agencies should provide clear explanations of quality ratings to parents. In addition to the Web site, Lead Agencies may have providers post their quality rating or have information explaining the rating system available at child care centers and family child care homes. This information should also be accessible to parents with low literacy or limited English proficiency;

(f) Provide, to the maximum extent practicable, financial incentives and other supports designed to expand the full diversity of child care options and help child care providers improve the quality of services. Research has found that initial supports and significant financial incentives are needed to make the quality improvements necessary for providers to move up levels in the QRIS. In order to ensure that providers continue to improve their quality and help move more low-income children into high-quality child care, we recommend Lead Agencies to make these incentives a focus of investment; and

(g) Accommodate a variety of distinctive approaches to early childhood education and care, including but not limited to, those practices in faith-based settings, community-based settings, child-centered settings, or similar settings that offer a distinctive approach to early childhood development. Parental choice is a very important part of the CCDF program, and parents often consider a variety of factors, including religious affiliation, when choosing a child care provider. Lead Agencies should take these factors into account when setting quality standards and levels in their QRIS, as well as designing how the information will be made available to the public.

4. *Improving the supply and quality of child care programs and services for infants and toddlers.* The Act includes improving the supply and quality of child care programs and services for infants and toddlers as an allowable quality activity, which we reiterate at § 98.53(a)(4). Lead Agencies may use any quality funds for infant and toddler quality activities, in addition to the required three percent infant and toddler quality set-aside. Lead Agencies are encouraged to pay special attention to what is needed to enhance the supply of high-quality care for infants and toddlers in developing their quality investment framework and coordinate activities from the main and targeted set asides to use resources most effectively. The Act and rule state that allowable activities may include:

(a) Establishing or expanding high-quality community or neighborhood-based family and child development centers, which may serve as resources to child care providers in order to improve the quality of early childhood services provided to infants and toddlers from low-income families and to help eligible child care providers improve their capacity to offer high-quality, age-appropriate care to infants and toddlers from low-income families. We interpret this provision to encourage the provision of resources to high-quality child care providers or other qualified community-based organizations that serve as hubs of support to providers in the community (by providing coaching or mentoring opportunities, facilitating efficient shared services, lending libraries, etc.);

(b) Establishing or expanding the operation of community or neighborhood-based family child care networks. As discussed earlier, staffed family child care networks can help improve the quality of family child care providers. Lead Agencies may choose to use the quality funds to help networks cover overheard and quality enhancement costs, such as providing access to coaches or health consultants, substitutes in order for staff to attend professional development, and peer activities;

(c) Promoting and expanding child care providers' ability to provide developmentally appropriate services for infants and toddlers, such as primary caregiving, continuity, responsive care, and foundations for future cognitive development;

(d) If applicable, developing infant and toddler components within the Lead Agency's QRIS for child care providers for infants and toddlers, or the development of infant and toddler components in the child care licensing regulations or early learning and development guidelines. Adopting standards specifically for infants and toddlers may be necessary to ensure the systemic support needed for individually-responsive care;

(e) Improving the ability of parents to access transparent and easy to understand consumer education about high-quality infant and toddler care as described at § 98.33; and

(f) Carrying out other activities determined by the Lead Agency to improve the quality of infant and toddler care provided, and for which there is evidence that the activities will lead to improved infant and toddler health and safety, infant and toddler cognitive and physical development, or infant and toddler well-being, including providing health and safety training (including training in safe sleep practices, first aid, and cardiopulmonary resuscitation for providers and caregivers).

5. *Establishing or expanding a statewide system of child care resource and referral services.* Section § 98.53(a)(5) of the final rule reiterates statutory language to include establishing or expanding a statewide

system of child care resource and referral services as an allowable quality activity. While § 98.52 includes a list of activities that child care resource and referral agencies should carry out if they are funded by Lead Agencies, Lead Agencies do not have to limit their resource and referral-related quality funds to those activities.

6. *Facilitating compliance with health and safety.* The final rule restates statutory language at § 98.53(a)(6) to include facilitating compliance with Lead Agency requirements for inspection, monitoring, training, and health and safety, and with licensing standards. While it is likely Lead Agencies will need to use quality funding for implementation and enforcement of the new minimum health and safety requirements for child care providers in the Act, we urge them to consider expenditures on this purpose foundational to enhancing quality, and consider how these investments are a part of the States' progress in improving the quality of child care available. For example, Lead Agencies should consider linking quality expenditures for health and safety training to the quality framework discussed earlier in this preamble, such that a Lead Agency may establish a QRIS that ties eligibility for providers to participate directly to licensing as the base level.

7. *Evaluating and assessing the quality and effectiveness of child care programs and services offered, including evaluating how such programs positively impact children.* The statutorily-allowable list of quality activities includes at § 98.53(a)(7) evaluating and assessing the quality and effectiveness of child care programs and services offered, including evaluating how such programs positively impact children. This final rule at § 98.53(f)(3) requires Lead Agencies to report on the measures they will use to evaluate progress in improving the quality of child care programs and services. Including evaluation as an allowable quality activity recognizes that evaluating progress may take additional investments, for which Lead Agencies may use quality funds. A good evaluation design can provide information critical to improving a quality initiative at many points in the process, and increase the odds of its ultimate success. (Government Accountability Office, *Child Care: States Have Undertaken a Variety of Quality Improvement Initiatives, but More Evaluations of Effectiveness Are Needed,* GAO–02–897).

8. *Supporting child care providers in the voluntary pursuit of accreditation by a national accrediting body with demonstrated, valid, and reliable program standards of high-quality.* The final rule restates statutory language at § 98.53(a)(8) supporting child care providers in the voluntary pursuit of accreditation by a national accrediting body with demonstrated, valid and reliable program standards of high-quality as an allowable quality activity. Accreditation is one way to differentiate the quality of child care providers. In order to gain accreditation, child care centers and family child care homes must meet certain quality standards outlined by accrediting organizations. Meeting these standards involves upfront investments and changes to programs or child-to-staff ratios which increase financial costs to programs. Quality funds can help providers cover these costs.

9. *Supporting efforts to develop or adopt high-quality program standards relating to health, mental health, nutrition, physical activity, and physical development.* The final rule restates statutory language at § 98.53(a)(9) supporting Lead Agency or local efforts to develop or adopt high-quality program standards relating to health, mental health, nutrition, physical activity, and physical development for children as an allowable quality activity. We recommend Lead Agencies look to Head Start for strong program standards in comprehensive services and consider how these standards may be translated into State and local strategies to deliver a similar array of services to families and children in child care. Half of children receiving CCDF are under the Federal Poverty Line and would quality for Head Start. This could include adding the standards to licensing, encouraging standards through QRIS, or embedding them in the requirements of grants or contracts for direct services. We encourage Lead Agencies that choose to use their quality funds for this activity to focus on research-based standards and work with specialists to develop age-appropriate standards in these areas.

10. *Carrying out other activities, including implementing consumer education provisions, determined by the Lead Agency.* This final rule restates statutory language at § 98.53(a)(10) that carrying out other activities, including implementing consumer education provisions at § 98.33, determined by the Lead Agency to improve the quality of child care services provided and for which measurement of outcomes relating to improvement of provider preparedness, child safety, child well-being, or entry to kindergarten is possible, are considered allowable quality activities. This tenth allowable activity provides Lead Agencies flexibility to invest in quality activities that best suit the needs of parents, children, and providers in their area. Over the years, Lead Agencies have been innovative in how they spent their quality funds, creating novel ways for improving quality of care, such as QRIS, that are now widely used tools for quality improvement. Therefore, we encourage Lead Agencies to experiment with the types of quality activities in which they invest. However, it is critical that Lead Agencies ensure that these new quality activities are focused and represent a smart investment of limited resources, which is why any activity that falls in the "other" category must have measurable outcomes that relate to provider preparedness, child safety, child well-being, or entry to kindergarten. Lead Agencies are encouraged to establish research-based measures for evaluating the outcomes of these quality activities. Lead Agencies will report on these measures and activities on an annual basis through the Quality Progress Report at § 98.53(f).

Commenters were overwhelmingly supportive of the increased focus on quality activities. While there were not many comments on individual allowable activities, several organizations specifically expressed support for the seventh allowable activity of evaluating and assessing the quality and effectiveness of child care programs and services offered at§ 98.53(a)(7), including evaluating how such programs positively impact children. As one national organization said "Transparency in this area is both important for State accountability and for informing the field and other States on best practices."

Comment: Several commenters, including national organizations and child care worker organizations, requested that supporting increased compensation for child care workers be included as an allowable use of quality funds. One commenter said, "Predicated upon the research-based connection between quality and compensation, ACF should be explicitly and abundantly clear about States' ability to use quality dollars to directly support increased compensation for early childhood educators." Another comment signed by several organizations recommended we "clarify that these resources are presented as additional funding options, but in no way preclude the use of CCDBG funds for such purposes of scholarships or compensation."

Response: We agree low pay for child care workers is a significant issue and impacts the quality of teachers and

directors that choose to work in child care. As we know that teacher-child interaction is one of the most important determinants of quality, it only makes sense that CCDF quality funds be allowed to be used to help access programs that may help to increase a child care worker's compensation. In response, § 98.53(a)(1)(vii) of the final rule provides that quality funds may be used to deliver financial resources to child care caregivers, teachers, and directors directly through programs that provide scholarships and compensation improvements for education attainment. These resources may include programs designed to increase wages through educational scholarships, education-based salary supplements, and training to current child care staff that will lead to a nationally-recognized credential and/or college credit in early childhood education.

Comment: Several national organizations and child care worker organizations requested we clarify that quality funds may be used for enhanced or differential payment rates for child care providers to cover the higher costs of providing high-quality care or care to infants and toddlers. One comment signed by several national organizations said "Because the base cost of providing quality for infants and toddlers is higher than that for older children, regulations should clarify that enhanced rates, even if not connected to a QRIS, are an allowable quality improvement strategy." In contrast, one commenter representing several child care resource and referral agencies recommended prohibiting quality funds from being used to support enhanced or differential payment rates because "given the need to increase rates overall throughout the states, [enhanced rates] would crowd out quality activities designed to strengthen the workforce, which we think are already underfunded."

Response: We recognize that certain types of care are more expensive to provide, including high-quality care and care for infants and toddlers. Lead Agencies have used their quality funds to provide differential rates to child care providers meeting higher levels of quality, either based on state QRIS ratings or other indicators of quality. These enhanced rates both incentivize providers to meet higher-quality standards and supports the increase costs for providers often associated with quality improvements. This final rule continues to allow differential payment rates for higher-quality care as an allowable use of quality funds.

However, we have concerns about quality funds being used to increase rates without consideration for the quality of care. The reauthorized Act clearly moves away from the idea that quality funds may be used to simply increase access and instead increase access to high-quality child care. We strongly discourage the use of quality funds for direct services, including enhanced rates for infant and toddler care regardless of quality, and suggest that in the limited circumstances when quality funds are used for this purpose, the rates still be tied in some way to high-quality care.

Comment: A few commenters, including professional organizations, suggested adding to § 98.53(b)(3)(viii): "Build on existing research-based, national accreditation by creating an entry point for accredited providers at an appropriate level higher than level one. Embedding accreditation into the QRIS supports a continuous quality improvement process and facilitates incorporating more and higher-quality providers into the QRIS."

Response: We declined to add this language to the regulation. We understand that national accreditations are often a marker for higher-quality child care, and some Lead Agencies already consider how these accreditations match up with the requirements of their QRIS or other system of quality indicators. This final rule in no way limits a Lead Agency's ability to continue this practice. However, adding this to regulatory language may have the impact of limiting a Lead Agency's flexibility in designing its QRIS. We have chosen to leave how accreditation is incorporated into a QRIS to the discretion of the Lead Agency.

Quality activities not restricted to CCDF children. This final rule clarifies at § 98.53 paragraph (d) that activities to improve the quality of child care are not restricted to children meeting eligibility requirements under § 98.20 or to the child care providers serving children receiving subsidies. Thus, CCDF quality funds may be used to enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance. To ensure consistency, this final rule also removed language included in the proposed rule at § 98.53(a) that said the funds had to be used to "increase the number of low-income children in high-quality child care." This final rule instead says the Lead Agency must expend funds from each fiscal year's allotment on quality activities pursuant to § 98.50(b) and § 98.83(g) in accordance with an assessment of need by the Lead Agency. Such funds must be used to carry out at least one of the listed quality activities.

Comment: The few comments we received on the provision supported the proposed changes. A local child care resource and referral organization said, "We are fully supportive of the clarification and from our experience on the ground within communities, we see that the broader use of quality dollars is making a difference within communities." However, one commenter expressed concern that this policy could lead to an increase in quality expenditures at the expense of direct services funding.

Response: This provision clarifies existing policy regarding CCDF quality expenditures, and we do not expect it to cause a shift in how Lead Agencies spend their funds. Lead Agencies continue to have the flexibility to determine how much of their allocation is spent on quality improvements, provided that they meet the expenditure minimums at § 98.50(b) and any targeted expenditure requirements at § 98.53(e). Therefore, we kept the proposed regulatory language.

Targeted funds and quality minimum. This final rule adds paragraph (e) at § 98.53 to codify longstanding ACF policy that targeted funds for quality improvement and other activities included in appropriations law may not count towards meeting the minimum quality spending requirement, unless otherwise specified by Congress. Beginning in FY 2000, Congress included in annual appropriations law for CCDF discretionary funds a requirement for Lead Agencies to spend portions of such funds on specified quality activities. Changes to the minimum quality spending requirement and the addition of a set-aside for infant and toddler care included in reauthorization may lead to changes or removal of targeted funds from annual appropriations law. However, we have chosen to include this provision to formalize the policy, in the event that targeted funds are included in future appropriations.

Reporting on quality activities. Sections 658G(c) and (d) of the Act require Lead Agencies to report total expenditures on quality activities, certify that those expenditures met the minimum quality expenditure requirement, and describe the quality activities funded. This final rule incorporates these reporting requirements into the regulation at § 98.53(f), requiring Lead Agencies to prepare and submit annual reports to the Secretary, including a quality progress report and expenditure report. The reports must be made publicly available, preferably on the Lead Agency's consumer education Web site

required at § 98.33(a). This final rule also requires that Lead Agencies detail the measures used to evaluate progress in improving the quality of child care programs and services, and data on the extent to which investments have shown improvements on the measures. Additionally, Lead Agencies must describe any changes to regulations, enforcement mechanisms, or other policies addressing health and safety based on an annual review and assessment of serious child injuries and any deaths occurring in child care programs serving children. While Lead Agencies are required to include child care programs serving children receiving CCDF in their reporting, we encourage the inclusion of other regulated and unregulated child care centers and family child care homes, to the extent possible, in keeping with the overall purpose of CCDF to enable more low-income children to access high-quality child care.

Currently, States and Territories report their categorical expenditures through the ACF–696 reporting form. This form is used to determine if the Lead Agency has met the minimum quality expenditure amount and is referenced at § 98.65(g) in this rule. We expect to continue to use the ACF–696 form to determine whether a Lead Agency has met expenditure requirements at § 98.50(b), including both the quality set-aside and the set-aside to improve quality for infants and toddlers.

We will capture information on the quality activities and the measures and data used to determine progress in improving the quality of child care services through a Quality Progress Report. This report replaces the Quality Performance Report that was an appendix to the Plan. The Quality Performance Report has played an important role in increasing transparency on quality spending. The new Quality Progress Report will continue to gather detailed information about quality activities, but include more specific data points to reflect the new quality activities required by the Act and this final rule. The Quality Progress Report will be a new annual data collection and will require a public comment and response period as part of the Paperwork Reduction Act process, which will give Lead Agencies and others the opportunity to comment on the specifics of the report.

As part of the Quality Progress Report, States and Territories will be required to describe any changes to regulations, enforcement mechanisms, or other policies addressing health and safety based on an annual review and assessment of any serious injuries and deaths occurring in child care programs serving children receiving CCDF assistance, and, to the extent possible, in other regulated and unregulated child care centers and family child care homes. This provision complements § 98.41(d)(4), discussed earlier in the preamble, which requires child care providers to report to a designated State or Territorial entity any serious injuries or deaths of children occurring in child care. States and Territories must consider any serious injuries and deaths reported by providers and other information as part of their annual review and assessment. This report also works in conjunction with the requirements at § 98.33(a)(4) that Lead Agencies post the annual aggregate number of deaths and serious injuries to their consumer education Web sites.

This provision requires Lead Agencies to list and describe the annual number of child injuries and fatalities in child care and to describe the results of an annual review of all serious child injuries and deaths occurring in child care. The primary purpose of this change is the prevention of future tragedies. Sometimes, incidents of child injury or death in child care are preventable. For example, one State reviewed the circumstances surrounding a widely-publicized, tragic death in child care and identified several opportunities to improve State monitoring and enforcement that might otherwise have identified the very unsafe circumstances surrounding the child's death and prevented the tragedy. The State moved quickly to make several changes to its monitoring procedures. It is important to learn from these tragedies to better protect children in the future. Lead Agencies should review all serious child injuries and deaths in child care, including lapses in health and safety (*e.g.*, unsafe sleep practices for infants, transportation safety, issues with physical safety of facilities, etc.) to help identify appropriate responses, such as training needs.

The utility of this assessment is reliant upon the Lead Agency obtaining accurate, detailed information about any child injuries and deaths that occur in child care. Therefore, ACF strongly encourages Lead Agencies to work with the State or Territory entity responsible for child care licensing in conducting the review and also with their established Child Death Review systems and with the National Center for the Review and Prevention of Child Death (*www.childdeathreview.org*). The National Center for the Review and Prevention of Child Death, which is funded by the Maternal and Child Health Bureau in the Health Resources and Services Administration (HRSA), reports there are more than 1,200 State and local teams in all 50 States and the District of Columbia, and emerging teams in Guam and the Navajo Nation. (National Center for the Review and Prevention of Child Death, *Keeping Kids Alive: A Report on the Status of Child Death Review in the United States,* 2013) The Child Death Review system is a process in which multidisciplinary teams of people meet to share and discuss case information on deaths in order to understand how and why children die so that they can take action to prevent other deaths. These review systems vary in scope and in the types of death reviewed, but every review panel is charged with making both policy and practice recommendations that are usually submitted to the State governor and are publicly available. The National Center for the Review and Prevention of Child Death provides support to local and State teams throughout the child death review process through training and technical assistance designed to strengthen the review and the prevention of future deaths.

Lead Agencies also may work in conjunction with the National Commission to Eliminate Child Abuse and Neglect Fatalities, established in 2013 by the Protect Our Kids Act. (Pub. L. 112–275). The Commission, consisting of 12 members appointed by the President and Congress, published its report *Within Our Reach: A National Strategy to Eliminate Child Abuse and Neglect Fatalities* (*http://eliminatechildabusefatalities.sites.usa.gov/files/2016/03/CECANF-final-report.pdf*) in 2016. Over two years, the Commission held hearings in 11 jurisdictions to hear from State leaders, local and tribal leaders, child protection and safety staff, advocates, parents, and other stakeholders. The report outlines a strategy to protect children at highest risk of fatality from abuse and neglect. Although this Commission only studied a subsection of child injuries and deaths, it is important that Lead Agencies work with the agencies charged with reviewing and implementing these recommendations and take them into consideration as they examine serious injuries and deaths occurring in child care settings.

The only comment received on this provision was positive and said, "This requirement will help prevent future incidents and ensure States use this feedback proactively to protect children". We have kept the proposed regulatory language.

This final rule adds a fifth component to the QPR, which requires Lead Agencies to report how they responded to complaints received through the national hotline and Web site required by Section 658L(b)(2) of the Act. As discussed earlier, § 98.16(hh) requires Lead Agencies report in their CCDF plans how they will respond to complaints received through the national hotline and Web site. The addition of this component to the QPR allows for HHS to gather information on how Lead Agencies handled the complaints they received. Adding this question to the QPR allows for HHS to ensure that complaints received through the national hotline and Web site have been addressed in a way deemed appropriate by the Lead Agency, provided the response meets health and safety requirements. As the QPR will be going through a new OMB clearance process under the Paperwork Reduction Act, Lead Agencies and other stakeholders will have the opportunity to comment on specific questions related to this regulatory requirement.

§ 98.54 Administrative Costs

Section 658E(c)(3) of the Act and regulations at § 98.54(a), as re-designated, prohibit Lead Agencies from spending more than five percent of CCDF funds for administrative activities, such as salaries and related costs of administrative staff and travel costs. Paragraph 98.54(c) provides that this limitation applies only to States and Territories (note that a 15 percent limitation applies to Tribes under § 98.83(g)). This final rule at § 98.54(b) formally adds a list of activities that should not be counted towards the limitation on administrative expenditures. As stated in the preamble to the 1998 CCDF Final Rule, the Conference Agreement that accompanied the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (H. Rep. 104–725 at 411) indicated that these activities should not be considered administrative costs. This list is incorporated into the regulation itself for clarity and easy reference. We did not receive any comments on this provision and kept the proposed regulatory language.

Administrative costs and sub-recipients. New paragraph § 98.54(e) clarifies that if a Lead Agency enters into agreements with sub-recipients for operation of the CCDF program, the amount of the contract or grant attributable to administrative activities as described at § 98.54(a) (or § 98.83(g) for Tribes) shall be counted towards the administrative cost limit. Previously existing CCDF regulation at § 98.54(a) provides a listing of activities that may constitute administrative costs and defines administrative costs to include administrative services performed by grantees or sub-grantees or under agreements with third-parties. We have received questions from Lead Agencies to clarify whether activities performed through sub-recipients or contractors are subject to the five percent administrative cost limitation. While we do not as a technical matter separately apply the administrative cap to funds provided to each sub-recipient, the Lead Agency must ensure that the total amount of CCDF funds expended on administrative activities—regardless of whether expended by the Lead Agency directly or via sub-grant, contract, or other mechanism—does not exceed the administrative cost limit.

Comment: A couple States submitted comments requesting clarification about which activities the cap applied to and how the change might impact their current sub-contracts. For example, one State commented that applying the five percent administrative cap to contracted centers would cause a significant number of providers to close.

Response: The administrative expenditure cap applies to activities related to administering the CCDF program. Administrative activities at § 98.54(a), as re-designated, include, but are not limited to: (1) Salaries and related costs of the staff of the Lead Agency or other agencies engaged in the administration and implementation of the program pursuant to § 98.11; (2) travel costs for official business in carrying out the program; (3) administrative services, including such services as accounting services, performed by grantees or sub-grantees or under agreements with third parties; (4) audit services as required at § 98.65; (5) other costs for goods and services required for the administration of the program, including rental or purchase of equipment, utilities, and office supplies; and, (6) indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to § 98.57, as re-designated.

The administrative cost cap only applies to activities related to administering the CCDF program in a State, Territory, or Tribe. It does not apply to administration of child care services in an individual child care center or family child care home. Any costs related to administration of services by a provider, even if that provider is being paid through a contract, are considered direct services. However, if a sub-recipient provides services that are part of administering the CCDF program and included in the list above, then those administrative costs would count toward the administrative cost limit.

Determining whether a particular service or activity provided by a sub-recipient under a contract, sub-grant, or other mechanisms would count as an administrative activity towards the five percent administrative cost limitation depends on the function or nature of the contract/sub-grant/mechanism. If a Lead Agency provides a contract or sub-grant for direct services, the entire cost of the contract could potentially be counted as direct services if there is no countable administrative component. On the other hand, if the entire sub-grant or contract provided services to administer the CCDF program (*e.g.*, for payroll services for Lead Agency employees), then the entire cost of the contract would count towards the administrative cost cap. If a sub-grant/contract includes a mix of administrative and programmatic activities, the Lead Agency must develop a method for attributing an appropriate share of the sub-grant/contract costs to administrative costs. Lead Agencies should refer to the list of activities that are exempt from the administrative cost cap at § 98.54(b) when determining what components must be included in the administrative cost limit. The regulation at § 98.54(e) formalizes pre-existing ACF policy regarding administrative costs. Therefore, the new paragraph should not have a significant impact on CCDF programs or create additional burdens to staying below the administrative cost cap. We have kept the proposed regulatory language.

§ 98.56 Restrictions on the Use of Funds

CCDF regulations at § 98.56(b)(1), as re-designated, indicate that States and local agencies may not spend CCDF funds for the purchase or improvement of land or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements. States and Territories may use CCDF funds for minor renovations related to meeting the requirements of the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, *et seq.*) However, funds may not be used for major renovation or construction for purposes of meeting the requirements of the ADA. Tribal Lead Agencies may request approval to use CCDF funds for construction and major

renovation of child care facilities (§ 98.84).

This final rule adds language at § 98.56(b)(1) to indicate that improvements or upgrades to a facility that are not specified under the definitions of construction or major renovation at § 98.2 may be considered minor remodeling and are, therefore, not prohibited. This final rule formally incorporates ACF's long-standing interpretation into regulatory language.

We received one comment expressing support for this clarification and the continued prohibition on using CCDF funds construction and major renovations. We left the language as proposed in the NPRM.

This final rule includes a technical change at § 98.56(e), as re-designated, adding that CCDF may not be used as the non-Federal share for other Federal grant programs, *unless explicitly authorized by statute.* We did not receive any comments on this provision.

Subpart G—Financial Management

The focus of subpart G is to ensure proper financial management of the CCDF program, both at the Federal level by HHS and the Lead Agency level. The final rule changes to this section include: Addressing the amount of CCDF funds the Secretary may set-aside for technical assistance, research and evaluation, a national toll-free hotline and Web site; incorporating targeted funds that have been included in appropriations language (but were not in the previous regulations); inclusion of the details of required financial reporting by Lead Agencies; and clarifying requirements related to obligations. Lastly, the final rule added a new section on program integrity.

§ 98.60 Availability of Funds

Technical assistance; research and evaluation; national toll-free hotline and Web site. Prior to reauthorization, the Act allowed the Secretary to provide technical assistance to help Lead Agencies carry out the CCDF requirements. Pursuant to pre-existing regulations, the Secretary withheld one quarter of one percent of a fiscal year's appropriation for technical assistance. The reauthorization added greater specificity to the Act regarding the provision of technical assistance. Specifically, Section 658I(a)(3) of the Act requires the Secretary to provide technical assistance, such as technical assistance to improve the business practices of child care providers, (which may include providing technical assistance on a reimbursable basis) which shall be provided by qualified experts on practices grounded in scientifically valid research, where appropriate. Section 658I(a)(4) requires the Secretary to disseminate, for voluntary informational purposes, information on practices that scientifically valid research indicates are most successful in improving the quality of programs that receive CCDF assistance. Section 658G requires the Secretary to offer technical assistance which may include technical assistance through the use of grants or cooperative agreements, on activities funded by quality improvement expenditures.

In addition, Sections 658O(a)(4), and 658O(a)(5) of the Act indicate that the Secretary shall reserve up to ½ of 1 percent of the amount appropriated for the Act to support these technical assistance and dissemination activities. Additionally, section 658O(a)(3) of the Act indicates that the Secretary may reserve up to $1.5 million for the operation of a national toll-free hotline and Web site. Annual appropriations law has provided funding for a national hotline and Web site in prior years, but this funding is now authorized through the Act with an expanded scope and requirements. In this final rule at § 98.60(b), we do not specify a particular funding amount for technical assistance, research and evaluation, or the national hotline and Web site. Rather, we say that "a portion" of CCDF funds will be made available for these purposes. Because appropriations law has addressed the amount of funding for some of these activities in the past, we want to leave flexibility to accommodate any future decisions by Congress. As we indicate in the regulatory language, funding for these activities is subject to the availability of appropriations, and will be made in accordance with relevant statutory provisions and the apportionment of funds from the Office of Management and Budget.

Obligations. The final rule adds a new provision at § 98.60(d)(7) to clarify that the transfer of funds from a Lead Agency to a third party or sub-recipient counts as an obligation, even when these funds will be used for issuing child care certificates. Some Lead Agencies contract with local units of government or non-governmental third parties, such as child care resource and referral agencies, to administer their CCDF programs. The functions included in these contracts could include eligibility determination, subsidy authorization, and provider payments. The contracting of some of these duties to a third party has led to many policy questions as to whether CCDF funds that are used by third parties to administer certificate programs are considered obligated at the time the subgrant or contract is executed between the Lead Agency and the third party pursuant to regulation at § 98.60(d)(5), or rather at the time the voucher or certificate is issued to a family pursuant to pre-existing regulation at § 98.60(d)(6).

The preamble to the August 4, 1992, CCDBG Regulations (57 FR 34395) helps clarify the intent of § 98.60(d). It states, "The requirement that State and Territorial grantees obligate their funds [within obligation timeframes] applies only to the State or Territorial grantee. The requirement does not extend to the Grantee's sub-grantees or contractors unless State or local laws or procedures require obligation in the same fiscal year." It follows that, in the absence of State or local laws or procedure to the contrary, § 98.60(d)(6) would not apply when the issuance of a voucher or certificate is administered by a third party because the funds used to issue the vouchers or certificates would have already been obligated by the Lead Agency. Based on this language, we have interpreted the obligation to take place at the time of contract execution between the Lead Agency and the third party. The addition of the added paragraph (d)(7) simply codifies pre-existing ACF policy, and does not change pre-existing obligation and liquidation requirements. Note that a local office of the Lead Agency, and certain other entities specified in regulation at § 98.60(d)(5) are not considered third parties. A third party must be a wholly separate organization and cannot be subordinate or superior offices of the Lead Agency, or under the same governmental organization as the Lead Agency.

The final rule adds several technical changes at § 98.60(d). It updates a reference to HHS regulations on expenditures and obligations at § 98.60(d)(4)(ii) to reflect new rules issued by HHS that implement the Office of Management and Budget's Uniform Administrative Requirements for Federal awards. The final rule includes § 98.60(d)(6) to clarify that the provision regarding the obligation of funds used for certificates applies specifically in instances where the Lead Agency issues child care certificates. Additionally, the final rule adds a technical change at § 98.60(h) to eliminate a reference to § 98.51(a)(2)(ii), which has been deleted. This technical change does not change the meaning or the substance of paragraph (h), which specifies that repayment of loans made to child care providers as part of a quality improvement activity may be made in cash or in services provided in-kind.

Comment: One State suggested that we modify the term "certificate" related to payment of services in § 98.60(d)(6) and (7) of this final rule. The commenter said that the Act's definition of the term 'certificate' indicates that disbursement is issued by a grantee directly to a parent, implying that the parent then uses this to pay a child care provider—a sort of arm's length transaction common in a market based system. The commenter stated that this does not match the certificate payment process in many States—where payment is made to the provider rather than the parent. Furthermore, the commenter stated that the term "grantee", used in the definition of "certificate", is synonymous with "Lead Agency" or with their designee. The commenter suggested either defining "grantee" or, replacing use of "grantee" where it occurs with "Lead Agency" or their designee for consistency.

Response: We declined to modify the regulatory definition for the term "certificate," also commonly known as "voucher," since the definition is largely based on statutory language. In the Act, the term "child care certificate" means a certificate (that may be a check, or other disbursement) that is issued directly to a parent who may use such certificate only as payment for child care services. However, we recognize that many States in fact make payments directly to child care providers on the parents' behalf for purposes of administrative ease, which is allowable as long as other requirements regarding certificates are met (including the parental choice provisions). We agree that the term "grantee" in this definition has the same meaning as the term "Lead Agency" or designee.

§ 98.61 Allotments From Discretionary Funds

Tribal funds. To address amended section 658O(a)(2) of the Act, this final rule revises § 98.61(c) to indicate that Indian Tribes and Tribal organizations will receive an amount "not less than" two percent of the amount appropriated for the Child Care and Development Block Grant (*i.e.,* CCDF Tribal Discretionary Funds). Under prior law and regulation, Tribes received "up to" two percent. Under the reauthorized Act, the Secretary may only reserve an amount greater than 2 percent for Tribes if two conditions are met: (1) The amount appropriated is greater than the amount appropriated in FY 2014, and (2) the amount allotted to States is not less than the amount allotted in FY 2014. It is important to note that reauthorization of the Act allows for a potential increase in the Tribal Discretionary funds, but it does not affect the Tribal Mandatory funds. Tribes may only be awarded up to 2 percent of the Mandatory Funds, per Section 418(a)(4) of the Social Security Act (42 U.S.C. 618(a)(4)). Recognizing the needs of Tribal communities, ACF increased the Tribal CCDF Discretionary set-aside from 2 percent to 2.5 percent for FY 2015, and to 2.75 percent for FY 2016. We encourage Tribes to use any increased funds for activities included in reauthorization, such as health and safety, continuity of care, and consumer education. ACF has consulted with Tribes regarding future funding levels and plans to make that determination on an annual basis, taking into consideration the overall appropriation level as well as unique Tribal needs and circumstances, including the need for sufficient funding to provide care that address culture and language in Tribal communities.

Targeted funds. This final rule adds § 98.61(f) to reference funds targeted through annual appropriations law. In prior years since FY 2000, annual appropriations law has required the use of specified amounts of CCDF funds for targeted purposes (*e.g.,* quality, infant and toddler quality, school-age care and resource and referral). The reauthorized Act includes increased quality spending requirements; however, we include this regulatory provision in the event that Congress provides for additional targeted funds in the future. The new paragraph (f) is for clarification so that the regulations provide a complete picture of CCDF funding parameters. New paragraph (f) provides that Lead Agencies shall expend any funds set-aside for targeted activities as directed in appropriations law.

Audits and financial reporting. The final rule adds a technical change at § 98.65(a), regarding the requirement for the Lead Agency to have an audit conducted in accordance with the Single Audit Act Amendments of 1996. This paragraph replaces a reference to OMB Circular A–133 with a reference to 45 CFR part 75, subpart F, which is the new HHS regulation implementing the audit provisions in the Office of Management and Budget's Uniform Administrative Requirements for Federal awards.

The final rule adds regulatory language at § 98.65(g), which previously provided that the Secretary shall require financial reports as necessary, to now specify that States and Territories must submit quarterly expenditure reports for each fiscal year. Currently, States and Territories file quarterly expenditure reports via the ACF–696; however, the prior regulations did not describe this reporting in detail. Revised paragraph (h) requires States and Territories to include the following information on expenditures of CCDF grant funds, including Discretionary (which includes any reallocated funds and funds transferred from the TANF block grant), Mandatory, and Matching funds; and State Matching and Maintenance-of-Effort (MOE) funds: (1) Child care administration; (2) Quality activities, including any sub-categories of quality activities as required by ACF; (3) Direct services; (4) Non-direct services including: (i) Computerized information systems, (ii) Certificate program cost/eligibility determination, (iii) All other non-direct services; and (6) Such other information as specified by the Secretary.

We added greater specificity to the regulation in light of the important role expenditure data play in ensuring compliance with the quality expenditure requirements at § 98.51(a), administrative cost cap at § 98.52(a), and obligation and liquidation deadlines at § 98.60(d). Additional expenditure data provide us with important details about how Lead Agencies are spending both their Federal and State CCDF funds, including what proportion of funds are being spent on direct services to families and how much has been invested in quality activities. These reporting requirements do not create an additional burden on Lead Agencies because we are simply updating the regulations to reflect current expenditure reporting processes.

Tribal financial reporting. This final rule adds a new provision at § 98.65 that requires Tribal Lead Agencies to submit annual expenditure reports to the Secretary via the ACF–696T. As with State and Territorial grantees, these expenditure reports help us to ensure that Tribal grantees comply with obligation and liquidation deadlines at§ 98.60(e), the fifteen percent administrative cap at § 98.83(g), and the quality expenditure requirement at § 98.51(a). This reporting requirement is current practice.

§ 98.68 Program Integrity

The final rule adds a new section § 98.68, which requires Lead Agencies to have effective procedures and practices that, ensure integrity and accountability in the CCDF program. These regulatory changes formalize the implementation process of the CCDF Plan, which require Lead Agencies to report in these areas.

The Plan now includes questions on internal controls, monitoring sub-recipients, approach to identify fraud

and payment errors, methods of investigation and collection of identified fraud, and sanctions for clients and providers who engage in fraud. ACF has been working with State, Territorial, and Tribal CCDF Lead Agencies to strengthen program integrity to ensure that funds are maximized to benefit eligible children and families. For example, ACF issued a Program Instruction (CCDF–ACF–PI–2010–06) that provides stronger policy guidance on preventing waste, fraud, and abuse and has worked with States to conduct case record reviews to reduce administrative errors. The requirements in this section build on these efforts and are designed to reduce errors in payment and minimize waste, fraud, and abuse to ensure that funds are being used for allowable program purposes and for eligible beneficiaries.

In the final rule, section § 98.68(a) requires Lead Agency internal controls to include processes to ensure sound fiscal management, processes to identify areas of risk, processes to train child care providers and staff of Lead Agency and other agencies engaged in the administration of CCDF about program requirements and integrity, and regular evaluation of internal control activities. Examples of internal controls include practices that identify and prevent errors associated with recipient eligibility and provider payment such as: Checks and balances that ensure accuracy and adherence to procedures; automated checks for red flags or warning signs; and established protocols and procedures to ensure consistency and accountability. We have also added language to the final rule to indicate that such internal controls should be undertaken while maintaining continuity of services. In other words, Lead Agencies must ensure that internal controls designed to limit errors and improper payments do not result in undue administrative burdens for families that would interfere with continued, stable subsidy receipt for eligible families. In addition, § 98.68(b)(1) of this final rule requires Lead Agencies to describe in their Plan the processes that are in place to identify fraud and other program violations associated with recipient eligibility and provider payment. These processes may include, but are not limited to, record matching and database linkages, review of attendance and billing records, quality control or quality assurance reviews, and staff training on monitoring and audit processes.

The provision at § 98.68(b)(2) of the final rule requires Lead Agencies to establish internal controls to investigate and recover fraudulent payments and impose sanctions on clients or providers in response to misuse of CCDF program funds. Lead Agencies are required to describe in their Plan the processes that are in place to identify fraud or other program violations. The Lead Agencies' requirements mandated under § 98.68(b)(2) build on pre-existing requirements at § 98.60(h)(1) to reduce errors in payment and minimize waste, fraud, and abuse to ensure that funds are being used for allowable program purposes and for eligible beneficiaries.

Similarly, the provision at § 98.68(c) requires Lead Agencies to describe in their Plans the procedures that are in place for documenting and verifying that children meet eligibility criteria at the time of eligibility determination and redetermination. Lead Agencies are responsible for ensuring that all children served in CCDF are eligible at the time of eligibility determination or redetermination. Lead Agencies should, at a minimum, verify or maintain documentation of the child's age, family income, and require proof that parents are engaged in eligible activities. Income documentation may include, but is not limited to, pay stubs, tax records, child support enforcement documentation, alimony court records, government benefit letters, and receipts for self-employed applicants. Documentation of participation in eligible activities may include school registration records, class schedules, or job training forms. Lead Agencies are encouraged to use automated verification systems and electronic recordkeeping practices to reduce paperwork.

Comment: A child care worker organization and a national organization supported the new paragraph in section 98.68(a) of this final rule, but wanted to add further language that would require Lead Agencies to describe in their Plan, the processes that are in place to make sure that child care providers are trained and knowledgeable about program violations and administrative rules.

Response: We agree and the final rule incorporates this language at § 98.68(a)(3). In order to ensure program integrity in a fair, consistent, and effective manner, it is essential for child care providers to be trained and knowledgeable about program rules, while maintaining quality of care and continuity of CCDF services. In addition, we have expanded this provision to require training for staff of the Lead Agency and other agencies engaged in administration of the CCDF about program requirements and integrity. It is essential for CCDF staff, especially frontline caseworkers who determine eligibility and authorize services, to be trained in program rules and program integrity efforts.

Subpart H—Program Reporting Requirements

§ 98.71 Contents of Reports

Section 98.71 of the final rule describes administrative data elements that Lead Agencies are required to report to ACF, including basic demographic data on the children served, the reason they are in care, and the general type of care. The majority of changes to reporting requirements described in this final rule have already been implemented through the Office of Management and Budget's information collection process under the Paperwork Reduction Act. The Office of Child Care issued revised forms and instructions for the ACF–800 (annual aggregate report) and ACF–801 (monthly case-level report) in January 2016. This final rule makes conforming changes in the regulation.

The ACF–801 report includes a data element on the total monthly family income and family size used for determining eligibility. Previous regulations at § 98.71(a)(1) do not include family size. Therefore, this final rule amends the regulatory language at § 98.71(a)(1) to align the regulations with the reporting requirements in effect. This does not represent any change in how Lead Agencies previously reported family income.

In addition, the final rule adds a new provision at § 98.71(a)(2), which requires Lead Agencies to report zip code data on both the family and the child care provider records. These new elements will allow States and Territories and ACF to identify the communities where CCDF families and providers are located, including the type and quality level of providers. Sections 658E(a)(2)(M) and 658E(a)(2)(Q) of the Act require States and Territories to address the needs of certain populations regarding supply and access to high-quality child care services in underserved areas including areas that have significant concentrations of poverty and unemployment. In comments, one national organization strongly supported this provision because it will enable policymakers to assess where families and providers reside and the level of quality available in their communities.

This final rule adds a new element at § 98.71(a)(11) that requires Lead Agencies to report, in addition to the total monthly family co-payment, any amount charged by the provider to the family more than the co-payment in

instances where the provider's price exceeds the subsidy payment, if applicable. Unlike all the other new data elements in this rule, this element has not yet been added to the ACF–801 form, but will be added through the Paperwork Reduction Act clearance process. For more information about the importance of this data element, see the related discussion on equal access (§ 98.45) earlier in the preamble.

Section 658K(a)(1)(E) of the Act prohibits the monthly case-level report from containing personally identifiable information. As a result, this final rule amends language at § 98.71(a)(14) by deleting Social Security Numbers (SSNs) and instead requiring a unique identifying number from the head of the family unit receiving assistance and from the child care provider. It is imperative that the unique identifier assigned to each head of household be used consistently over time—regardless of whether the family transitions on and off subsidy, or moves within the State or Territory. This will allow Lead Agencies and ACF to identify unique families over time in the absence of the Social Security Number (SSN). A Lead Agency may still use personally identifiable information, such as SSNs, for its own purposes, but this information cannot be reported on the ACF–801. Furthermore, pursuant to the Privacy Act (5 U.S.C. 552a note), Lead Agencies cannot require families to disclose SSNs as a condition of receiving CCDF services. The final rule adds a new provision at § 98.71(a)(16) to indicate whether a family is experiencing homelessness based on statutory language at Section 658K(a)(1)(B)(xi) that requires Lead Agencies to report whether children receiving CCDF assistance are experiencing homelessness. Many national organizations strongly supported this provision in their comments. This final rule also adds a new provision at § 98.71(a)(17) to indicate whether the parent(s) are in the military service. The Administration has taken a number of actions to increase services and supports for members of the military and their families. This element will identify if the parent is currently active duty (*i.e.*, serving fulltime) in the U.S. Military or a member of either a National Guard unit or a Military Reserve unit. This data will allow Lead Agencies and ACF to determine the extent to which military families are accessing the CCDF program.

In addition, this final rule adds a new provision at § 98.71(a)(18) to indicate whether a child is a child with a disability. Section 658E(c)(3)(B) of the Act requires a Lead Agency's priority for services to include children with special needs. ACF is required to determine annually whether Lead Agencies use CCDF funds in accordance with priority for services requirements, including the priority for children with special needs. While Lead Agencies have flexibility to define "children with special needs" in their CCDF Plans, many include children with disabilities in their definitions. This data will help ACF determine, as required by the Act, whether Lead Agencies are in compliance with priority for service requirements. Furthermore, the reauthorization added several other provisions related to ensuring children with disabilities have access to subsidies, and that the child care available meets the needs of these children. This data element will provide information about the extent to which the CCDF program is serving children with disabilities.

Additionally, the final rule adds a new provision at § 98.71(a)(19) to require Lead Agencies to report a new data element on the primary language spoken in the child's home, using responses that are consistent with data reporting requirements for the Head Start program. The reauthorized Act includes provisions that support services to English learners. Section 658E(c)(2)(G) of the Act requires Lead Agencies to assure that training and professional development of child care providers address needs of certain populations to the extent practicable, including English learners. Under Section 658G, allowable quality activities include providing training and outreach on engaging parents and families in culturally and linguistically appropriate ways to expand their knowledge, skills, and capacity to become meaningful partners in supporting their children's positive development.

In accordance with sections 658E(c)(2)(J) and 658E(c)(2)(C) of the Act, which mandates monitoring and inspection requirements for Lead Agencies, the final rule adds a new provision at § 98.71(a)(20) to indicate, for each child care provider currently providing services to a CCDF child, the date of the most recent inspection for compliance with health, safety, and fire standards (including licensing standards for licensed providers) as described in § 98.42(b). Lead Agencies will need to track inspection dates to ensure that CCDF providers are monitored at least annually. If the Lead Agency uses more than one visit to check for compliance with these standards, the Lead Agency should report the most recent date on which all inspections were completed. Moreover, the final rule adds provision at § 98.71(a)(21) to require Lead Agencies to submit an indicator of the quality of the child care provider as part of the quarterly family case-level administrative data report. This change will allow ACF and Lead Agencies to capture child-level data on provider quality for each child receiving a child care subsidy. This addition is in line with one of the Act's new purposes, which is to increase the number and percentage of low-income children in high-quality child care. States and Territories currently report on the quality of child care provider(s) based on several indicators—including: QRIS participation and rating, accreditation status, compliance with State prekindergarten standards or Head Start performance standards, and other State defined quality measure. However, until recently, States and Territories were required to report on at least one of the quality elements for a portion of the provider population. This resulted in limited quality data, often for only a small portion of child care providers in a State or Territory. This change now requires quality information for every child care provider. Working with States and Territories to track this data will give us a key indicator on the progress we are making toward the goal of increasing the number of low-income children in high-quality care. Lead Agencies must also take into consideration the cost of providing higher-quality care when setting payment rates pursuant to § 98.44(f)(iii). To ensure that the CCDF program is providing meaningful access to high-quality care, it is essential for Lead Agencies to have data on the quality of CCDF providers. Prior paragraph (a)(16) is re-designated as paragraph (a)(22) but otherwise is unchanged. Several national organizations submitted comments in support of this provision.

The final rule also adds a new provision at § 98.71(b)(5) to report the number of child fatalities by type of care, as required by section 658K(a)(2)(F) of the Act. This should include the number of fatalities occurring among children while in the care and facility of child care providers serving CCDF children (regardless of whether the child who dies was receiving CCDF). Previous paragraph (b)(5) is re-designated as paragraph (b)(6) but otherwise is unchanged.

The final rule revises paragraph (c), regarding reporting requirements for Tribal Lead Agencies to specify that the Tribal Lead Agency's annual report shall include such information as the Secretary will require. We intend to

revisit requirements for all Tribal Lead Agencies, pursuant to the changes in Subpart I. Proposed reporting requirements will be subject to public comment under the Paperwork Reduction Act.

Comment: In general, commenters supported revisions to this section. Specifically, commenters appreciated the additional reporting of various data elements to improve the quality and transparency of the program reporting requirements. Some commenters recommended that Lead Agencies be required to post all reports submitted to ACF on the Lead Agency Web site in a timely manner (*e.g.*, within 30 days), while always respecting family confidentiality.

Response: The final rule adds a new provision at § 98.71(d) to require State and Territorial Lead Agencies make available on a Web site in a timely manner annual aggregate administrative data reports via the ACF–800 under § 98.71(b), quarterly financial reports under § 98.65(g), and annual quality progress reports under § 98.53(f). We understand the value of having reports submitted by Lead Agencies available via the Lead Agencies' Web sites in a timely manner for purposes of transparency regarding administration of the program.

We declined to require Lead Agencies to post case level reports on their Web site. Pursuant to section 658K(a)(1)(E) of the Act and § 98.71(a)(13) of this final rule, we are concerned about the potential confidentiality issues that may arise related to case-level reporting on ACF–801. We want to protect the confidentiality of families and children who receive CCDF assistance. Furthermore, we post State-by-State tables of CCDF administrative data on the Office of Child Care Web site. In addition, each year we post an updated dataset of the administrative reports on our collaborative research Web site *www.researchconnections.org* for use and analysis by researchers.

Comment: Many national organizations supported the provision at § 98.71(a)(18) to require Lead Agencies to report the language spoken at home on the ACF–801. However, one commenter said that the requirements in the Act and the NPRM to provide services and take reasonable steps to provide access to individuals with limited English proficiency can be accomplished without placing additional burdens on States and families to report the language spoken at home. The commenter also stated that Lead Agencies are already aware of the typical languages spoken by families in the community and can design training services to meet the needs of the local community without placing this additional reporting burden on parents.

Response: We declined to remove the provision at § 98.71(a)(18) of this final rule to require Lead Agencies to submit data reporting on language spoken at home on ACF–801. Retaining this reporting requirement is necessary to obtain adequate national longitudinal data on the languages spoken by families at home, so Lead Agencies and child care providers can tailor their services to meet the needs of the families they serve, and to allow for transparency and oversight to ensure adequate access for these families.

Comment: Some national organizations supported the provision we added at § 98.71(a)(17) of this final rule that requires Lead Agencies to report whether a child receiving CCDF has a disability. Some commenters were disappointed with the definition of "child with a disability" in the Act that gives Lead Agencies the flexibility to include their own State-specific definition. One commenter recommended that the data collection distinguish whether the child has a disability in accordance with (a) IDEA; or (b) ADA or Section 504 of the Rehabilitation Act.

Response: While we appreciated commenters' support and input on approaches for Lead Agencies to report disability data, we declined to further clarify the type of disability that Lead Agencies must report. We expect Lead Agencies to follow the Act's definition of "child with a disability". Under the Act, "child with a disability" means (1) A child with a disability, as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401); (2) A child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*); (3) A child who is less than 13 years of age and who is eligible for services under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and (4) A child with a disability, as defined by the State involved.

Comment: One State commented about the information technology costs associated with the implementation of the provisions in section § 98.71 of this final rule.

Response: As mention earlier, the Office of Child Care has already implemented the majority of new data reporting requirements through the Paperwork Reduction Act information collection clearance process. For many of the new data elements, we have provided a phased-in implementation period to allow for States and Territories to make necessary changes to their automated systems. Lead Agencies may use CCDF funds to upgrade their data reporting systems to meet the new requirements.

Subpart I—Indian Tribes

This subpart addresses requirements and procedures for Indian Tribes and Tribal organizations applying for or receiving CCDF funds. This section describes provisions of Subpart I and serves as the Tribal summary impact statement as required by Executive Order 13175. CCDF currently provides funding to approximately 260 Tribes and Tribal organizations that administer child care programs for approximately 520 federally-recognized Indian Tribes, either directly or through consortia arrangements. Tribal CCDF programs are intended for the benefit of Indian children, and these programs serve only Indian children. With few exceptions, Tribal CCDF grantees are located in rural and economically challenged areas. In these communities, the CCDF program plays a crucial role in offering child care options to parents as they move toward economic stability, and in promoting learning and development for children. In many cases, Tribal child care programs also emphasize traditional culture and language. Below we discuss the Tribal CCDF framework and regulatory changes.

The Act is not explicit in how its provisions apply to Tribes. ACF traditionally issues regulations to define how the Act applies to Tribes. This final rule is the result of several months of consultation on the reauthorized Act and on the 2015 NPRM with Tribes, as well as past consultations and Tribal comments on our 2013 NPRM. We heard from many Tribal leaders and CCDF Administrators asking for flexibility to implement child care programs that meet the needs of individual communities. The requirements in this final rule are designed to increase Tribal Lead Agency flexibility, while balancing the CCDF dual goals of promoting families' financial stability and fostering healthy child development.

Tribal consultation and comments. ACF is committed to consulting with Tribes and Tribal leadership to the extent practicable and permitted by law, prior to promulgating any regulation that has Tribal implications. As this rule has been developed, ACF has engaged with Tribes through multiples means. The requirements in this final rule were informed by past consultations, listening sessions, and meetings with Tribal representatives on related topics.

Starting in early 2015, we began a series of formal consultations, conducted in accordance with the ACF Tribal Consultation Policy (76 FR 55678) with Tribal leaders to determine how the provisions in the Act should apply to Tribes and Tribal organizations. In addition to an informal listening session in February 2015, from March to May 2015, OCC held three formal conference calls and an in-person consultation session with Tribal leaders and Tribal CCDF administrators to discuss the impact of reauthorization on Tribes. Tribes and Tribal organizations were informed of these consultations and conference calls through letters to Tribal leaders. Much of the testimony and dialogue focused on the vast differences among Tribes and Tribal organizations.

After the proposed rule was published, OCC conducted a formal, in-person consultation with Tribal leadership in January 2016 during the public comment period. Tribal CCDF administrators and staff were also invited to attend. We included the written testimonies we received as formal comments on the proposed rule. In addition, we held conference calls, including Regional calls with Tribal CCDF Administrators, and disseminated materials specifically addressed to Tribes to describe the impact of the proposed rule. Throughout, we encouraged Tribes to submit written comments during the public comment period. We received 15 comments from Tribes and Tribal organizations, many of which were co-signed by multiple Tribes. We will address these comments in this subpart.

This rule was informed by these conversations and comments. We continue to balance flexibility for Tribes to address the unique needs of their communities with the need to ensure accountability and quality child care for children. In response to the comments we received from Tribes, we have made changes to how the final rule applies to Tribes, including clarifying implementation periods and adding in flexibility around the background check requirements. Below we discuss broader contextual issues, including how provisions located outside of Subpart I apply to Tribes, before moving on to a discussion of changes to Sections 98.80, 98.81, 98.82, 98.83, and 98.84.

102–477 programs. We note that Tribes continue to have the option to consolidate their CCDF funds under a plan authorized by the Indian Employment, Training and Related Services Demonstration Act of 1992 (Pub. L. 102–477). This law permits Tribal governments to integrate a number of their federally-funded employment, training, and related services programs into a single, coordinated comprehensive program. ACF publishes annual program instructions providing directions for Tribes wishing to consolidate CCDF funds under an Indian Employment, Training, and Related Services plan. This program instruction will include information on how this final rule impacts the 102–477 Plan. The Department of the Interior has lead responsibility for administration of Public Law 102–477 programs.

Dual eligibility of Indian children. Census data indicates over 60 percent of American Indian and Alaskan Native families do not reside on reservations or other Native lands; therefore, significant numbers of eligible Indian children and families are served by State Lead Agencies. Eligible Indian children who reside in Tribal service areas continue to have dual eligibility to receive child care services from either the State or Tribal CCDF program, in accordance with pre-existing regulation, at § 98.80(d). Section 658O(c)(5) of the Act mandates that, for child care services funded by CCDF, the eligibility of Indian children for a Tribal program does not affect their eligibility for a State program.

Implementation. The NPRM did not discuss implementation timeframes specific to Tribal Lead Agencies. The CCDBG Act of 2014 included effective dates for States and Territories, but these effective dates do not apply to Tribes.

Comment: Many Tribal commenters emphasized that Tribes need an appropriate timeline for implementation of the final rule. The national association of tribal child care programs recommended a 24 to 36 month implementation period.

Response: We agreed with the commenters. Although many Tribes have already begun moving forward, this final rule represents a shift in the Tribal CCDF requirements. ACF will determine compliance with provisions in this final rule through review and approval of the FY 2020–2022 Tribal CCDF Plans that become effective October 1, 2019. Using the next Plan cycle to gage compliance will give Tribes approximately three years (or close to 36 months) to implement the new provisions in the final rule. This will provide more opportunities for consultation and technical assistance to Tribes to assist in development of the CCDF Plan. Tribes may submit Plan amendments, as necessary, if they wish to change their policies prior to the beginning of the next Plan period.

Tribes that have consolidated CCDF with other employment, training and related programs under Public Law (Pub. L. 102–477), are not required to submit separate CCDF Plans, but will be required to submit amendments to their Public Law 102–477 Plans, along with associated documentation, in accordance with this timeframe to demonstrate compliance with the final rule.

Comment: The CCDBG Act of 2014 included phased-in increases to the quality expenditure requirements (§ 98.50(b)(1)), so that States and Territories must spend at least seven percent of their CCDF funds on quality improvement activities starting in FY 2016 and increasing to nine percent by 2020. Starting in FY 2017, States and Territories must also spend three percent on quality improvement activities for infants and toddlers (§ 98.50(b)(2)). Commenters also asked for Tribal-specific implementation timelines to the quality expenditure requirements.

Response: We agreed with the commenters. As the timeframe for States and Territories exists in regulatory language at § 98.50(b), in the final rule, we added new regulatory language at § 98.83(g) to give Tribes a longer phase-in period. As described later in the preamble, all Tribes, regardless of their CCDF allocation amount, are subject to the quality expenditure requirements. Tribes receiving large and medium allocations are also subject to the three percent infant and toddler quality spending requirement.

Because the quality spending requirements are new to Tribes that were previously exempt, ACF is allowing a phased-in timeframe starting with four percent in FY 2017. In FY 2018 and 2019, the quality expenditure requirements will increase to seven percent and then, to eight percent in FY 2020 and 2021. Finally, starting in FY 2022, Tribes will be required to spend nine percent on quality improvement activities. Tribes with large and medium allocations will be subject to the three percent infant and toddler quality requirement starting in FY 2019.

Federal fiscal year	Quality set-aside (all tribes) (percent)	Infant/toddler (large/medium allocations) (percent)	Total quality set-aside for tribes with small allocations (percent)	Total quality set-aside for tribes with large/medium allocations (percent)
FY 2017	4		4	4
FY 2018	7		7	7
FY 2019	7	3	7	10
FY 2020	8	3	8	11
FY 2021	8	3	8	11
FY 2022 (and ongoing)	9	3	9	12

This phase-in mimics timeframes allowed to States and Territories by the CCDBG Act of 2014 and gives Tribes time to plan for the quality increases each year.

Funding. Tribal CCDF funding is comprised of two funding sources: (1) Discretionary Funds, authorized by the Act and annually appropriated by Congress; and (2) Tribal Mandatory Funds, provided under Section 418(a)(4) of the Social Security Act (42 U.S.C. 618(a)(4)). Reauthorization of the Act allows for a potential increase in the Tribal Discretionary funds, but does not affect the Tribal Mandatory funds. Tribes may only be awarded up to two percent of the Mandatory Funds, per the Social Security Act.

Comment: In the NPRM, ACF asked for comment on the Tribal CCDF Discretionary set-aside, including the process to be used to determine the amount of the Discretionary set-aside. We received a number of comments from Tribes and Tribal organizations asking for a Tribal Discretionary set-aside of not less than five percent.

Response: According to Section 658O(a)(2) of the Act, Tribes will receive not less than two percent of the Discretionary CCDF funding. The Secretary may reserve an amount greater than two percent for Tribes if two conditions are met: (1) The amount appropriated is greater than the amount appropriated in FY 2014, and (2) the amount allotted to States is not less than the amount allotted in FY 2014. Given that the Act provides two conditions that must be met in order to raise the Tribal Discretionary set-aside, we cannot permanently raise the set-aside to five percent.

ACF does recognize the needs of Tribal communities and increased the Tribal CCDF Discretionary set-aside from two percent to 2.5 percent in FY 2015 and up to 2.75 percent in FY 2016. These increased set-asides raised the total Tribal CCDF Funding from $107 million in FY 2014 to $134 million in FY 2016. We encouraged Tribes to use the increased funding on activities included in reauthorization, such as health and safety, continuity of care, and consumer education, in order to implement this final rule. ACF will continue consulting with Tribes when determining the Discretionary set-aside each year.

Tribal CCDF framework. Tribes shall be subject to the CCDF requirements in Part 98 and 99 based on the size of their CCDF allocation. CCDF Tribal allocations vary from less than $25,000 to over $12 million. We recognize that Tribes receiving smaller CCDF grants may not have sufficient resources or infrastructure to effectively operate a program that complies with all CCDF requirements. Therefore, in the final rule, there are now three categories of CCDF Tribal grants, with thresholds established by the Secretary: Large allocations, medium allocations, and small allocations. Each category is paired with different levels of CCDF requirements, with those Tribes receiving the largest allocations expected to meet most CCDF requirements. Tribes receiving smaller allocations are exempt from specific provisions in order to account for the size of the grant awards (see table below).

Large allocations	Medium allocations	Small allocations

• Subject to the majority of CCDF requirements.
• Exempt from some requirements, including, but not limited to: Consumer education website, the requirement to have licensing for child care services, market rate survey or alternative methodology (but still required to have rates that support quality), and the training and professional development framework.
• Subject to the monitoring requirements, but allowed the flexibility to propose an alternative monitoring methodology in their Plans.
• Subject to the background check requirements, but allowed to propose an alternative background check approach in their Plans.
	• Allowed the same exemptions as the large allocation category.
	• Exempt from operating a certificate program.
		• Exempt from the majority of CCDF requirements, including those exemptions for large and medium allocation categories.
		• Must spend their funds in alignment with CCDF goals and purposes.
		• Only subject to:
		  • The health and safety requirements;
		  • The monitoring requirements;
		  • The background check requirements;
		  • Quality spending requirements (except the infant and toddler quality spending requirements);
		  • Eligibility definitions of Indian child and Indian reservation/service area;
		  • The 15% admin cap;
		  • Fiscal, audit, and reporting requirements; and
		  • Any other requirement defined by the Secretary.
		• Submit an abbreviated Plan.

Commenters were generally supportive of the new Tribal CCDF framework that was proposed in the NPRM. Given the broad range in Tribal CCDF allocation amounts, the tribal framework allows CCDF requirements to be better scaled to the size of a Tribe's allocation.

Comment: In the NPRM, ACF proposed that grants over $1 million would be considered large allocations. Grants between $250,000 and $1 million would be considered medium allocations. Finally, grants of less than $250,000 would be considered small allocations. We did not propose to set the allocation thresholds through regulation so that they could be updated or revised at a later date through consultation and notice. A few commenters recommended lower dollar thresholds than the NPRM had proposed for the delineations among small, medium, and large allocations.

Response: Although we considered lowering the thresholds between the allocation amounts, we are not making changes to the allocation thresholds in this final rule. Using the FY 2016 Tribal allocations, large allocations (CCDF grants over $1 million) include 34 Tribal grantees; medium allocations (CCDF grants between $250,000 and $1 million) include 72 Tribal grantees; and small allocations (CCDF grants less than $250,000) include 153 Tribal grantees. Although these thresholds are not regulatory and can be adjusted in the future, we wanted to set thresholds that could be stable over time as the program grows.

Comment: ACF received several questions from commenters asking how Tribes will transition between allocation amounts if their CCDF allocation increases from a small allocation to a medium allocation or a medium allocation to a large allocation.

Response: In the past, Tribes have been given one year from the time they receive their grant award to make programmatic changes and to submit Plan amendments to transition from exempt to non-exempt. But because there are significantly more requirements between the allocation thresholds (particularly between small and medium allocations), Tribes will need more time to make programmatic changes to comply with the new requirements.

If a Tribe's allocation increases enough to move from a small allocation to a medium allocation (or a medium allocation to a large allocation), the Tribe will be informed, as before, through their grant award letter. In most cases, the Tribe will have until the next Plan cycle to make changes and submit a new Plan that reflects the allocation threshold. The Tribe may also submit Plan amendments in order to make these changes more quickly. Tribes that cross an allocation threshold during the last year of a Plan cycle will have a transition period of at least one year and therefore, if necessary, may come into compliance through Plan amendments after the next Plan cycle has started. During this transition period, ACF will work closely with the Tribal Lead Agency to provide technical assistance and support.

Comment: Several commenters asked for clarity in how the new framework would apply to Tribal consortia. Some commenters asked that consortia, regardless of the size of their allocation, be held to the same standard as Tribes receiving large allocations. Other commenters emphasized that because consortia divide their funds among participating Tribes or Native villages, the allocation size does not necessarily correlate with the capacity of the participating Tribes.

Response: We declined to set separate requirements for Tribal consortia. The framework will apply to consortia in the same way that it applies to other Tribes and Tribal organizations. Requirements are set by CCDF allocation size.

Comment: A couple commenters asked for additional requirements for Tribes receiving small allocations. One commenter wrote that Tribes receiving small allocations should be required "to establish some basic eligibility criteria for families receiving CCDF funded child care. We encourage OCC to clearly indicate that, even within these flexible eligibility parameters, including children from all federally recognized Tribes in the definition of 'Indian children' for child count purposes and then prioritizing services to members of the Tribal Lead Agency's Tribe would not be allowable."

Response: We agreed with the comments. As described later in the preamble, Tribes receiving small allocations are exempt from the majority of the CCDF eligibility requirements, but if they are providing direct services, they will need to describe their eligibility criteria in their Plans. In addition, at § 98.83(f)(8), we are requiring them to define the terms "Indian child" and "Indian reservation or tribal service area" for purposes of determining eligibility.

Definition of homelessness. In the final rule, Tribes are subject to the regulatory definition at § 98.2 of a child experiencing homelessness, as well as the requirement at § 98.46(a)(3) to give priority for services to children experiencing homelessness.

Comment: Many commenters asked that Tribes be given flexibility to define homelessness for their communities because the definition in the McKinney-Vento Act, which is used in these regulations, may not meet the needs of Tribal communities. One Tribe wrote recommending "that Tribes should self-determine the definition of 'homeless' allowing for informal custody of family members without court guardianship documents."

Response: We understand that homelessness and lack of adequate housing are significant concerns in many Tribal communities. However, the definition from the McKinney-Vento Act is broad that therefore already allows significant flexibility for prioritizing CCDF services. Using the McKinney-Vento definition will make it easier to align with other programs, like Head Start or the State CCDF, that already use McKinney-Vento as the standard.

Eligibility for services. Tribal Lead Agencies receiving large or medium allocations are subject to the new and revised provisions around eligibility for services in Subpart C of this final rule—including, but not limited to, changes regarding: The 12-month re-determination periods at § 98.21(a); the continued assistance provisions at § 98.21(a)(2); and the graduated phase-out at § 98.21(b).

Comment: In the NPRM, we proposed that Tribes receiving large or medium allocations would be subject to the requirement at § 98.21(a) establishing that all Lead Agencies shall re-determine a child's eligibility for child care services no sooner than 12 months following the initial determination or most recent re-determination. Tribal comments were divided around this issue. Several commenters voiced concerns about the 12-month re-determination periods, and many commenters explained that Tribes need more flexibility to best serve their communities.

However, other commenters praised the 12-month re-determination requirements. One tribal child care program wrote, "I applaud the minimum 12-month eligibility change; our program adopted this in 2015, and it has allowed enrolled children to maintain consistency in their child care settings. Parents have expressed relief that they are not in danger of losing their child care benefits if they move or experience a change in employment, school, or job training. Additionally, this change has removed burdensome and invasive tracking of parents' status by eligibility staff and the resulting withdrawal and re-enrollment of families." Another tribal child care program wrote, "12-month eligibility periods with payments to child care providers on a regular basis will accomplish the intent of the law. If Tribes use the 3-months of job search, it should not significantly affect wait lists. It should save staff time of CCDF

grantees to not process the paperwork for a more frequent eligibility period, allowing more funding for direct services."

Response: We recognize that there are unique circumstances in Tribal communities; however, the importance of continuity of care and reducing the administrative burden on families served outweighs the commenters' concerns. As discussed earlier in Subpart C, 12-month re-determination periods provide stability and continuity in the program that benefits both children and families. Continuity of subsidy receipt not only supports financial self-sufficiency by offering working families stability to establish a strong financial foundation, it also prepares children for school by creating stable conditions necessary for healthy child development and early learning. We know that the relationship between children and their caregivers is an essential aspect of quality, and policies that minimize temporary disruption to subsidy receipt also support stability in a child's care arrangement.

As described earlier in Subpart C, during the minimum 12-month eligibility period, Tribal Lead Agencies may not end or suspend child care authorizations or provider payments due to a temporary change in a parent's work, training, or education status, which includes seasonal work. In other words, once determined eligible, children are expected to receive a minimum of 12 months of child care services, unless family income rises above 85 percent Grantee Median Income (GMI) or, at Lead Agency option, the family experiences a non-temporary cessation of work, education, or training.

We note that Tribal Lead Agencies are also subject to the continued assistance provision at § 98.21(a)(2) so that if a parent experiences a non-temporary job loss or cessation of education or training, Tribal Lead Agencies have the option—but are not required—to terminate assistance prior to 12 months. Prior to terminating assistance, the Tribal Lead Agency must provide a period of continued assistance of at least three months to allow parents to engage in job search activities. This provision is described in greater detail in Subpart C.

Comment: Tribes receiving large or medium allocations are subject to the requirement at § 98.21(b) for a graduated phase-out. This requirement applies to Tribal Lead Agencies that set their initial income eligibility level below 85 percent of GMI. In those instances, the Tribal Lead Agency will be required to establish two-tiered eligibility thresholds, with the second tier of eligibility set at 85 percent of SMI or a family of the same size, but with the option of establishing a second tier lower than 85% of SMI as long as that level is above the Lead Agency's initial eligibility threshold, takes into account the typical household budget of a low income family, and provides justification that the eligibility threshold is (1) sufficient to accommodate increases in family income that promote and support family economic stability; and (2) reasonably allows a family to continue accessing child care services without unnecessary disruption. Therefore, at redetermination, children who meet all other non-income related eligibility criteria would be considered eligible for a CCDF subsidy if their income exceeds the initial eligibility threshold but is still below the second eligibility threshold. This is discussed in greater detail above in the preamble discussion on graduated phase-out at § 98.21(b). We only received one comment on this provision from a Tribe who asked us to limit the graduated phase-out period to three months to mirror the period for job search.

Response: We declined to make any Tribal-specific changes to graduated phase-out provision. Income eligibility policies play an important role in promoting pathways to financial stability for families. In addition, the vast majority of Tribes already set their initial income eligibility levels at 85 percent of GMI. For these Tribes, the graduated phase-out provision does not apply.

Consumer Education. Tribal Lead Agencies receiving large or medium allocations are generally subject to the new and revised provisions around consumer education in Subpart D of this final rule—including, but not limited to, changes regarding: The parental complaint hotline at § 98.32(a) and the consumer education provisions at § 98.33.

Many Tribal commenters recommended that Tribal Lead Agencies be allowed to use a method for accepting and resolving parental complaints other than through a parental complaint hotline. These commenters believe that a hotline will create an administrative and financial burden, and especially because in smaller communities, there are issues with unfounded accusations and confidentiality issues.

Response: We strongly encourage Tribal Lead Agencies to establish policies that provide for thorough tribally-directed investigations, confidentiality protections, and due process related to accepting and resolving parent complaints. Tribal Lead Agencies should partner with other Tribal agencies that may have jurisdiction or expertise. Concerns about the possibility of ultimately unfounded accusations and confidentiality do not overcome the need to have a system in place to ensure children are safe, secure, and healthy. Parents should know who to contact if they have a concern, particularly if they feel there is an imminent threat that could result in danger to a child or children. Having a hotline ensures that parents have a reliable mechanism to report complaints. Although ACF encourages it, the hotline is not required to be operated for 24 hours or in multiple languages.

In the final rule, we also allow Lead Agencies to use similar reporting processes, like a secure Web site or email address, to collect parental complaints. In addition to providing an accessible mechanism for parental complaints, the Tribal Lead Agency must take appropriate and timely actions to investigate and resolve complaints. Tribes may continue to receive written complaints in addition to a hotline or Web site. Simply making the phone number of the Tribal child care office widely available and documentation of responses to parental complaints is adequate. Other than more widely publicizing the phone number, in some situations, no other action may be required. Tribes also have the option of coordinating with States to use the State-designated hotline for parental complaints.

Comment: One commenter worried that requiring Tribes receiving large or medium allocations to collect and disseminate consumer education as required at § 98.33 would be a significant administrative burden.

Response: We declined to exempt Tribes with large or medium allocations from the consumer education requirements. As discussed in Subpart D, parents often lack information regarding specific requirements that individual child care providers may or may not meet. Parents choosing a provider should be able to do so with access to any relevant information that the Tribe may have about that provider, including any health and safety, licensing or regulatory requirements met by the provider, the date the provider was last inspected, and history of violations, and compliance actions taken against a provider.

As proposed in the NPRM and discussed later in the preamble, all Tribes are exempt from the consumer education Web site and all requirements that specifically relate to the Web site. Tribal Lead Agencies have the flexibility

to use a variety of approaches to disseminate consumer education, including the use of brochures, Tribal newsletters, or social media. Consumer education services should be directly included as part of the intake and eligibility process for families applying for child care assistance.

Health and Safety. In keeping with the goals of this final rule and the intent of the Act, ensuring the health and safety of children in child care and promoting quality to support child development are of the utmost importance. As such, all Tribes, including those with small allocations, are subject to the health and safety requirements at § 98.41 (as well as the monitoring and background check requirements, discussed later in this preamble), and all Tribes are required to meet the quality spending requirements at § 98.83(g) and § 98.53.

All Tribes are required to meet the requirements at § 98.41(a), which include requirements around a list of health and safety topics; health and safety training; setting group size limits and ratios; and compliance with child abuse reporting requirements. These health and safety requirements create a baseline essential to protecting children in child care. (In addition, as discussed below, all Tribes are subject to the immunization requirements that previously only applied to States and Territories.)

In the NPRM, we proposed to require Tribes receiving small allocations to be subject to the health and safety requirements, only if they were providing direct services. However, in the final rule, we are removing the reference to direct services. Regardless of whether they are providing direct services, Tribal Lead Agencies need to ensure any child care program receiving CCDF dollars meets the health and safety standards at § 98.41 (as well as the monitoring and background check requirements.)

The Act, at Section 658O(c)(2)(D) of the Act continues to require HHS to develop minimum child care standards for Indian Tribes and Tribal organizations receiving funds under CCDF. After three years of consultation with Tribes, Tribal organizations, and Tribal child care programs, health and safety standards were first published in 2000. The standards were updated and reissued in 2005. The HHS minimum standards are voluntary guidelines that represent the baseline from which all programs should operate to ensure that children are cared for in healthy and safe environments and that their basic needs are met. Many Tribes already exceed the minimum Tribal standards issued by HHS, and some have used the minimum standards as the starting point for developing their own more specific standards. These minimum standards will need to be revised and updated to align with new requirements of the Act and this final rule. In the preamble to Subpart E, ACF recommends that Lead Agencies consult the recently published *Caring for Our Children Basics (CfoC Basics)* for guidance on establishing health and safety standards.

Comment: In the NPRM, we requested comment on whether the *CfoC Basics* should replace the current HHS minimum standards as the new health and safety guidelines for Tribes. Commenters agreed that the HHS minimum standards need to be updated but emphasized that the standards should not be updated without Tribal consultation. In addition, several commenters asked that Tribes be given the flexibility to incorporate customs and traditions into care, standards, and caregiver trainings.

Response: ACF is committed to consultation with Tribes and will not release revised minimum standards without first consulting Tribes. We have begun the process of revising the standards with guidance from a workgroup composed of Tribal CCDF health and safety experts. The group is reviewing *CfoC Basics* and adding Tribal customs and traditions, such as the use of cradleboards. We will use these revised standards to consult with Tribes and hope to reissue them shortly.

Comment: Overall, the commenters were supportive of the new requirements around health and safety. One commenter asked that individual Tribes be granted exemptions to specific requirements if the Tribe provides an adequate plan for addressing health and safety with limited resources.

Response: We declined to allow Tribes to request exemptions to the health and safety requirements at § 98.41. As stated earlier, we view these requirements to be a baseline for health and safety. Health and safety is the foundation of quality in child care, and health promotion in child care settings can improve children's development. These changes will make significant strides in strengthening standards to ensure the basic safety, health, and well-being of children receiving a child care subsidy.

Comment: One commenter wrote recommending that "States be required to communicate, coordinate and collaborate with any Tribe in their jurisdiction for training opportunities and professional development, and provide documentation of the same. States should fund participation as much as possible." The commenter also asked that Tribal monitoring inspectors also have access to the State inspectors' training opportunities.

Response: The Act already requires States to make training and professional development opportunities accessible to Tribal caregivers, teachers, and directors. The training should also be appropriate for Native American children. These requirements, located in Subpart E at §§ 98.44(b)(2)(vi) and 98.44(b)(2)(iv)(D), give States the obligation to communicate, coordinate, and collaborate with Tribes on training opportunities. We also strongly encourage States to make training opportunities accessible to Tribal monitoring inspectors, when appropriate. States and Tribal Lead Agencies should document this collaboration in the CCDF Plans.

§ 98.80 General Procedures and Requirements

Section 98.80 provides an introduction to the general procedures and requirements for CCDF Tribal grantees. As discussed above, ACF modified § 98.80(a) so that Tribes are subject to CCDF requirements based on the size of their total CCDF allocation. Please see the earlier discussion of the Tribal CCDF Framework for more information and a discussion of the comments received.

§ 98.81 Application and Plan Procedures

Section 98.81 addresses the application and Plan procedures for Tribal CCDF grantees, and much of the new regulatory language in this section, particularly the Plan exemptions listed at § 98.81(b)(6) and § 98.81(b)(9), reflects the changes made in Section 98.80 (General procedures and requirements) and Section 98.83 (Requirements for Tribal programs). These exemptions will be discussed in greater detail later in the preamble. Tribes receiving large or medium allocations will continue to fill out a traditional Tribal CCDF Plan, described at § 98.81(b), and Tribes receiving small allocations will fill out an abbreviated Plan, described at § 98.81(c). The Plan periods will now be three years, as required by the Act.

Categorical eligibility. At § 98.81(b)(1), the regulations require that the Plan filled out by Tribes receiving large or medium allocations must include the basis for determining family eligibility. The final rule adds language at § 98.81(b)(1)(i) to allow a Tribe, whose Tribal Median Income (TMI) is below a level established by the Secretary, the option of considering any Indian child in the Tribe's service area to be eligible

to receive CCDF funds, regardless of the family's income, work, or training status, provided that provision for services still goes to those with the highest need. We are setting the threshold at 85 percent of State Median Income (SMI). Using 85 percent of SMI mirrors other thresholds set by the Act and allows the majority of CCDF Tribes to exercise this option, if they choose. We are not setting this threshold through regulation to allow the level to be updated in the future though consultation and notice.

Comment: We received mixed support for the categorical eligibility provision. NICCA commented that they appreciated ". . . the flexibility this provides to Tribes to determine how to provide quality, consistent early childhood services to best meet their communities' needs." Other commenters worried that this provision would increase waitlists and would increase the potential for fraud or the prioritization of Tribal Council members' children.

Response: If Tribes choose to take advantage of this option, then they can create opportunities to align CCDF programs with other Tribal early childhood programs, including Tribal home visiting, Early Head Start, and Head Start. This provision also allows Tribes to better take advantage of Early Head Start-Child Care Partnership grants. There are limited resources in Tribal communities, and we wanted to create the flexibility within the CCDF program to more easily align with other early childhood programs.

However, we do acknowledge the commenters' concerns. In response, the final rule requires Tribes that take this option ensure that provision for services still goes to those with the highest need. Tribal Lead Agencies will describe in their Plans how they are ensuring those families with the greatest need are receiving CCDF services. We also note that, while Tribes can determine any Indian child eligible regardless of the family's income, work, or training status, other requirements, such as the sliding fee scale, still apply.

In addition, if a Tribe chooses to take this option, the Tribe's CCDF Plan must show a comparison of TMI and SMI by family size. The Tribe will also need to include in the Plan the documentation of the TMI data source. Tribes may use tribally-collected income data, but we strongly recommend that Tribes use Census data. The data should be the most recent TMI and SMI data available. We will provide technical assistance in documenting the Tribe's TMI to Tribes that choose this option.

Income eligibility. The final rule moves previously-existing regulatory language from § 98.80(f) to § 98.81(b)(1)(ii). Under this revised provision, if a Tribe chooses not to exercise the option for categorical eligibility at § 98.81(b)(1)(i) or has a TMI higher than 85 percent of SMI, then the Tribe would determine eligibility for services in accordance with § 98.20(a)(2). That is, Tribes will set income eligibility requirements that do not exceed 85 percent of SMI or TMI. Tribes will continue to have the option of using either 85 percent of SMI or 85 percent of TMI.

Comment: Several Tribes and tribal organizations were worried that moving this provision would limit Tribes' flexibility to make decisions about income eligibility.

Response: Moving this provision does not affect current policy. Tribes continue to have the flexibility to set income eligibility requirements for their program and communities. In accordance with § 98.20(a)(2), a family's income may not exceed 85 percent of SMI or TMI.

Payment rates. The final rule exempts all Tribes from the requirement to use a market rate survey or alternative methodology to set provider payment rates (discussed later in this preamble). However, at § 98.81(b)(5), we require that Plans submitted by Tribes receiving large or medium allocations include a description of the Tribe's payment rates; how they are established; and how they support quality, and where applicable, cultural and linguistic appropriateness. While market rate surveys or alternative methodologies do not necessarily make sense for Tribal communities, it is important for Tribal Lead Agencies to have rates sufficient to provide equal access to the full range of child care services, including high-quality child care. We did not receive comments on this provision.

Plan exemptions. At § 98.81(b)(6), ACF adds eight new Plan exemptions for Tribes receiving large or medium allocations. In the NPRM, we proposed that such Tribal Lead Agencies would be exempt from including in their Plans descriptions of the market rate survey or alternative methodology; the licensing requirements applicable to child care services; and the early learning guidelines. We are keeping these three exemptions in the final rule, as well as adding five additional exemptions. Tribal Lead Agencies are also exempt from including in their Plans the certification to develop the CCDF Plan in consultation with the State Advisory Council; the identification of the public or private entities designated to receive private funds; the descriptions relating to Matching funds; and the description of how the Lead Agency prioritizes increasing access to high-quality child care in areas with high concentrations of poverty. These requirements do not apply to Tribal communities, and these exemptions mirror changes made in Section 98.83. They are discussed in further detail later in the preamble.

At § 98.81(b)(9), Plans for Tribes receiving medium allocations are exempt from the requirements relating to a description of the child care certificate program, unless the Tribe choses to include those services. This exemption corresponds with the exemption in Section 98.83(e) discussed later in the preamble.

Plans for Tribes receiving small allocations. Tribes receiving small allocations (less than $250,000) are exempt from the majority of CCDF requirements. These Tribes are only subject to core CCDF requirements, described later in Section 98.83(f). As such, at § 98.81(c), we require that these Tribes fill out an abbreviated CCDF Plan, tailored to these core requirements. A shorter Plan application is more aligned with the level of funding that these Tribes receive. All of the Plan exemptions described in § 98.81(b) for Tribes receiving large or medium allocations will also apply to Tribes receiving small allocations. ACF will release a Program Instruction defining the elements that will be included in the abbreviated Plan for Tribes receiving small allocations.

§ 98.82 Coordination

Section 98.82 requires Tribal Lead Agencies to coordinate with State CCDF programs and with other Federal, State, local, and Tribal child care and child development programs. Tribal Lead Agencies must also coordinate with the entities listed at § 98.12 and § 98.14.

Comment: One commenter asked us to clarify in the regulatory language that Tribal Lead Agencies need to coordinate, to the extent practicable, with the entities listed at § 98.12 and § 98.14.

Response: We agreed with the commenter. The preamble language from our NPRM made it clear that our expectation is that Tribal Lead Agencies should coordinate to the extent practicable, so we added the regulatory language to clarify this expectation in the final rule. This addition does not change pre-existing policy; it serves as a clarification of the regulatory language.

The regulations at § 98.82 require Tribal Lead Agencies to coordinate with the entities described at § 98.14 in the

development of their Plans and the provision of services, to the extent practicable. This list includes newly added child care licensing, Head Start collaboration, State Advisory Councils on Early Childhood Education and Care or similar coordinating bodies, statewide afterschool networks, emergency management and response, CACFP, services for children experiencing homelessness, Medicaid, and mental health services. We do recognize that Tribes may not always have access or connections with these entities. Many of these agencies, especially the State Advisory Councils and the statewide afterschool networks, interact primarily on the State level. Others, including child care licensing and Head Start, may not exist in the Tribe's service area.

Tribes should coordinate with these agencies to the extent possible. The Tribal Plan pre-print will ask Tribes to describe their efforts to coordinate with all the entities listed at § 98.14, but if coordination is not applicable, then the Tribes may simply say so in their Plans. We will support Tribal Lead Agency efforts to coordinate with these entities and plan to provide technical assistance to both Tribes and States to promote Tribal access and participation.

Tribes should also take note of two new provisions in the Act, reiterated in this final rule, which require State coordination with Tribes. First, at § 98.10(f), State Lead Agencies must collaborate and coordinate with the Tribes, at the Tribes' option, in a timely manner in the development of the State Plan. States must be proactive in reaching out to the Tribal officials for collaboration and are required to describe how they collaborated and coordinated with Tribes in their State Plans.

Second, State Lead Agencies must have training and professional development in place designed to enable child care providers to promote the social, emotional, physical, and cognitive development of children and to improve the knowledge and skills of child care caregivers, teachers, and directors in working with children and their parents. Section 98.44(b)(2)(vi) requires that this training and professional development be accessible to caregivers, teachers, and directors of CCDF child care providers supported through Indian Tribes or Tribal organizations. Section 98.44(b)(2)(iv)(D) provides that the training and professional development should also, to the extent practicable, be appropriate for Native American children. Tribes should work with States to help ensure that these statutory requirements are met. Tribal CCDF programs should also coordinate with other childhood development programs located in the Tribal service area, including any programs that support the preservation and maintenance of native languages.

§ 98.83 Requirements for Tribal Programs

Section 98.83 addresses specific requirements for Tribal CCDF programs. In recognition of the unique social and economic circumstances in many Tribal communities, Tribal Lead Agencies are exempt from a number of CCDF requirements. At paragraph (d)(1), we exempt all Tribes, regardless of allocation size, from: A consumer education Web site at § 98.33(a); the requirements for licensing applicable to child care services at § 98.40; the professional development framework at § 98.44(a); the market rate survey or alternative methodology and the related requirements at § 98.45(b)(2); the requirement that Lead Agencies prioritize increasing access to high-quality child care in areas of high concentrations of poverty; and the quality progress report at § 98.53(f). Tribes that receive medium or small CCDF allocations are also exempt from the requirements of operating a certificate program at § 98.30(a) and (d). Tribes that receive small allocations are exempt from the majority of the new CCDF requirements to give these Tribes more flexibility in how they spend their CCDF funds. Finally, two provisions apply to all Tribes, unless the Tribe describes an alternative in its Plan: Monitoring of child care providers and facilities at § 98.42(b)(2) and conducting background checks at § 98.43.

We are also removing previously-existing language on immunizations so that Tribes must now assure that children receiving CCDF services are age-appropriately immunized. We added regulatory language to add clarity to the previously-existing exemptions; this language does not change the previous policy. ACF added two new paragraphs at (d)(2) and (d)(3) giving Tribes more flexibility around the monitoring inspections requirements and the requirement for comprehensive background checks. At paragraph (e), ACF exempts Tribes receiving medium or small CCDF allocations from the requirement to operate a certificate program. At paragraph (f), ACF adds more flexibility for Tribes receiving small allocations by only subjecting them to core CCDF requirements.

Service area. The final rule includes a technical addition at § 98.83(b) to clarify that Tribes (with the exception of Tribes without reservations located in Alaska, California, or Oklahoma) must operate their CCDF programs on or near Indian reservations. Long-standing ACF policy guidance clarifies that a Tribe's service area must be "on or near the reservation," and therefore must be within a reasonably close geographic proximity to the delineated borders of a Tribe's reservation. Tribes that do not have reservations must establish service areas within reasonably close geographic proximity to the area where the Tribe's population resides. ACF will not approve an entire State as a Tribe's service area. This policy clarification does not affect States' jurisdiction over child care licensing. Tribal service areas are also addressed in the regulations at § 98.81(b)(2)(ii), and the same policy guidance applies.

Comment: One commenter asked ACF to delete the exception for Alaska, California, and Oklahoma because several Tribes in these States now have reservations.

Response: We declined to remove this exception from the regulatory language. Although there are reservations in Alaska, California, and Oklahoma, the majority of Tribes in these States do not have reservations. Tribes located in these three States that have an established reservation area should define their service area to be "on or near" the reservation.

Consumer education Web site. All Tribes are exempt from the requirement for a consumer education Web site at § 98.33(a) because of the administrative cost of building a Web site, as well as the lack of reliable high-speed internet in some Tribal areas. Furthermore, in some instances, the small number of child care providers in the Tribe's service area may not warrant the development and maintenance of a Web site. However, where appropriate, we encourage Tribes to implement Web sites for consumer education and to work with entities, such as States or child care resource and referral agencies that maintain provider-specific information on a Web site. For example, in cases where Tribal child care providers are licensed by the State, information about compliance with health and safety requirements should be available on the State's Web site. We did not receive any comments on this exemption.

Licensing for child care services. ACF is exempting all Tribes from the requirement to have in effect licensing requirements applicable to child care services at § 98.40. This is a pre-existing statutory and regulatory requirement that was re-affirmed by the reauthorized Act. The majority of CCDF Tribal grantees do not have their own licensing

requirements. Many Tribes certify in their Plans that they have adopted their State's licensing standards, but these requirements may not be appropriate for Tribal communities. In addition, requiring Tribes to have licensing requirements is counter to Section 658O(c)(2)(D) of the Act, which requires that in lieu of any licensing and regulatory requirements under State or local law, the Secretary, in consultation with Indian Tribes and Tribal organizations, shall develop minimum child care standards that shall be applicable to Indian Tribes and Tribal organization receiving assistance under this subchapter. Tribes may instead use the voluntary guidelines issued by HHS, described earlier in the preamble. We did not receive any comments on this exemption.

Training and professional development framework. We are exempting Tribes from the requirement at § 98.44(a) to describe in their CCDF Plan the State framework for professional development. This requirement is State-specific and not relevant for Tribes.

We do note, as discussed in greater detail earlier in the preamble, that States are required to communicate, coordinate, and collaborate with Tribes around training and professional development opportunities to make sure that tribal providers have access to training opportunities. Ongoing State professional development must be accessible to caregivers supported through Indian Tribes and Tribal organizations. The trainings must also be, to the extent practicable, appropriate for populations of Native American and Native Hawaiian children.

Market rate survey or alternative methodology. Section 98.83(d)(1)(iv) of the final rule exempts all Tribes from conducting a market rate survey or alternative methodology and all of the related requirements. In many Tribal communities, the child care market is extremely limited. Also, many Tribes are located in rural, isolated areas, making a market rate survey or alternative methodology difficult. Furthermore, § 98.83(e) of the final rule exempts Tribes receiving CCDF allocations of $1 million or less (medium and small allocations) from operating a certificate program. Therefore, these Tribes are not required to offer the full range of child care services. For these Tribes especially, market rate surveys are not relevant. Despite exempting Tribes from these requirements, setting payment rates to support quality is essential to providing equal access to child care services. Tribes receiving large or medium allocations will be asked in their Plans how rates were set and how these rates support quality. We did not receive any comments on this exemption.

Increasing access to high-quality in concentrations of poverty. The final rule exempts all Tribes from the requirement at § 98.46(b) to prioritize increasing access to high-quality child care and development services for children and families in areas that have significant concentrations of poverty and unemployment and that do not have a sufficient number of such programs.

Comment: In the NPRM, Tribes were subject to this requirement, and several commenters did not believe that it was appropriate for Tribal communities.

Response: We agreed with the commenters. Given the poverty that exists on many Tribal reservations and service areas, we decided this requirement was redundant for Tribes. In addition, this exemption aligns with another pre-existing policy that exempts Tribes from the requirement to give priority for services to children of families with very low family income.

Although Tribes are exempt from this requirement, we note that Tribes receiving large and medium allocations are subject to the requirements at § 98.46(a)(2) and (3). These Tribal Lead Agencies must give priority for services to children with special needs, which may include any vulnerable populations as define by the Lead Agency and to children experiencing homelessness.

Quality Progress Report. At § 98.83(d)(1)(vii), Tribal Lead Agencies are exempt from completing the Quality Progress Report (QPR) at § 98.53(f), which is a revised version of the former Plan appendix, the Quality Performance Report. In the future, we are planning to add additional questions on quality improvement activities to the Tribal Plan, ACF–700, and ACF–696T, but we will discuss these changes with Tribes and provide opportunity for public comment.

The QPR includes a report describing any changes to State regulations, enforcement mechanisms, or other policies addressing health and safety based on an annual review and assessment of serious child injuries and any deaths occurring in child care programs. Under this provision, Tribes are exempt from completing the QPR, including the review and assessment of serious injuries and deaths. Notwithstanding, we encourage Tribal Lead Agencies to complete a similar process to the one described in the QPR and to review the reported serious injuries or deaths and make policy or programmatic changes that could potentially save a child's life.

Immunization requirement. Consistent with the final rule's overall focus on promoting high-quality care that supports children's learning and development, § 98.83(d) of the final rule removes the reference to § 98.41(a)(1)(i). This change extends coverage of CCDF health and safety requirements related to immunization so that the requirements apply to Tribes, whereas previously Tribes were exempt. At the time the previous regulations were issued in 1998, minimum Tribal health and safety standards had not yet been developed and released by HHS. However, the minimum Tribal standards have subsequently been developed and released, and the standards address immunization in a manner that is consistent with the requirements at § 98.41(a)(1)(i). As a result, there is no longer a compelling reason to continue to exempt Tribes from this regulatory requirement. Many Tribes have already moved forward with implementing immunization requirements for children receiving CCDF assistance. By extending the requirement to Tribes, we will ensure that Indian children receiving CCDF assistance are age-appropriately immunized as part of efforts to prevent and control infectious diseases.

Comment: Commenters expressed concern about the new immunization requirement and asked for grace period to implement the requirement.

Response: As described earlier in the preamble, ACF will not be begin determining compliance with the final rule until the next Plan cycle with the FY 2020–2022 CCDF Plans. Tribal Lead Agencies will be able to use that time before that Plan cycle to work toward implementing the immunization requirements. In addition, as with States and Territories, Tribes have flexibility to determine the method to implement the immunization requirement. For example, they may require parents to provide proof of immunization as part of CCDF eligibility determinations, or they may require child care providers to maintain proof of immunization for children enrolled in their care. We also note, as indicated in the regulation, Lead Agencies have the option to exempt the following groups: (1) Children who are cared for by relatives; (2) children who receive care in their own homes; (3) children whose parents object on religious grounds; and (4) children whose medical condition requires that immunizations not be given. In determining which immunizations will be required, a Tribal Lead Agency has flexibility to apply its own immunization recommendations or standards. Many Tribes may choose to

adopt recommendations from the Indian Health Service or the State's public health agency.

Monitoring inspections. In the final rule, all Tribes, regardless of allocation size, are subject to the monitoring requirements at § 98.42(b)(2), which reflect the requirements in the Act. However, we allow Tribal Lead Agencies to describe an alternative monitoring approach in their Plans, subject to ACF approval, and must provide adequate justification for the approach. Section 658E(c)(2)(K) of the Act requires at least one pre-licensure inspection and annual unannounced monitoring for licensed child care providers. License-exempt providers are subject to annual monitoring on health, safety, and fire standards. The rule also allows Lead Agencies to use differential monitoring strategies and to develop alternate monitoring requirements for care provided in the child's home.

Comment: Commenters expressed support for the flexibility to propose an alternative approach and to partner with other agencies to conduct monitoring.

Response: In our 2013 NPRM, we also proposed that Tribal Lead Agencies would be subject to monitoring requirements, and we received many comments asking for more flexibility for Tribes. As with the 2013 NPRM, the monitoring requirements in the Act and the additional requirements described in this rule may not be culturally appropriate for some Tribal communities. By allowing Tribes to describe alternative monitoring strategies in their Plans, we intend to give Tribal Lead Agencies some flexibility in determining which monitoring requirements should apply to child care providers. Tribes cannot use this flexibility to bypass the monitoring requirement altogether, but may introduce a monitoring strategy that is culturally appropriate or more financially feasible for their communities. Tribes may also use this flexibility to partner with other agencies that may already be conducting monitoring visits, such as State Lead Agencies, the Indian Health Service, or the Child and Adult Care Food Program. Coordinating and partnering with existing agencies can help lessen the financial and administrative burden.

Comment: One comment asked for clarity around how the monitoring requirement for licensed and licensed-exempt child care providers would apply to Tribes. The commenter noted that most Tribes do not have licensing requirements in place.

Response: We declined to make any Tribal-specific changes to how the monitoring requirements apply to licensed or license-exempt child care providers. If a Tribal child care provider is licensed by the State or by the Tribe, then that provider shall be required to receive at least one pre-licensure visit and an annual unannounced monitoring inspection, provided that the Tribe has not proposed an alternative strategy in the Plan. On the other hand, if the Tribal child care provider is not licensed by the State or the Tribe, then that provider is subject to annual monitoring on health, safety, and fire standards. These monitoring requirements are discussed in greater detail in Subpart E of the preamble.

Comprehensive background checks. Tribal Lead Agencies are subject to the background check requirements at § 98.43. A comprehensive background check includes: An FBI fingerprint check; a search of the National Crime Information Center's National Sex Offender Registry; and a search of the following registries in the State where the child care staff member lives and each State where the staff member has lived for the past five years: State criminal registry using fingerprints, State sex offender registry, and the State child abuse and neglect registry, as described at § 98.43(b).

We note that, in order to conduct an FBI fingerprint check using Next Generation Identification, Lead Agencies must act under an authority granted by a Federal statute. States, as described in Subpart E, may choose among three federal laws that grant authority for FBI background checks for child care staff. These three statutes are: The Act, Public Law 92–544, and the National Child Protection Act/ Volunteers for Children Act. These three laws give States the authority to conduct FBI fingerprint checks, but none of them specifically grant that same authority to Tribes. In order for Tribes to conduct FBI background checks, they may use the Indian Child Protection and Family Violence Prevention Act, which, to date, only covers those individuals who are being considered for employment by the Tribe in positions that have regular contact with, or control over, Indian children. Otherwise, Tribes will need to work with States to complete the FBI background check using a State's authority under an approved Public Law 92–544 statute or under procedures established pursuant to the National Child Protection Act/Volunteers for Children Act (NCPA/VCA). We understand that this may present difficulties for Tribes, especially for those that do not currently have a partnership with the State. Therefore, in the final rule at § 98.83(d)(3), we are allowing Tribes to describe an alternative background check approach in their Plans, subject to ACF approval, and must describe an adequate justification for the approach.

Comment: Commenters were very supportive of the requirements for background checks for child care staff members. One Tribe wrote that it "supports criminal background checks performed on all types of child care providers and household members over 18 years of age. We think in the safety of our children and persons responsible for their care."

Commenters also described the substantial amounts of time and money needed to complete the checks. They worried about jurisdictional issues between Tribes and States, making it difficult for Tribes to gain access to all of the required checks. In addition, other commenters felt that particular elements, such as some of the disqualifying crimes may not be appropriate for Tribes. One Tribe said, "Tribes should . . . determine whether providers meet qualifications and as sovereign nations, should have the flexibility to implement a waiver and appeals process for some of the crimes listed in § 98.43(c)(1)."

Response: We agree with the commenters that comprehensive background checks are important for ensuring children's health and safety in child care. We applaud the commenters' support of these requirements. However, we also acknowledge the significant challenges that face Tribes in being able to comply. As such, Tribes will be allowed to describe an alternative approach in their Plans and describe how the approach continues to protect the health and safety of children.

ACF will not approve approaches with blanket exemptions or waivers to the background check requirements. We expect to allow some flexibility around the components of a comprehensive background check, particularly when there are jurisdictional issues between States and Tribes or when conducting background checks on other adults residing in family child care homes. Tribes should coordinate with States as much as possible in order to obtain access to the FBI and State databases. However, without an authorizing statute, we felt that Tribes may need flexibility to propose alternative checks that ensure children's health and safety.

When a Tribe is conducting background checks on other adults in a family child care home, we have heard through our consultation sessions that many Tribal families reside in households with several generations. Requiring all members of the household to complete all five components of a

comprehensive background check could be burdensome for the family and for the Tribal Lead Agency. Therefore, the Tribal Lead Agency could also use an alternative strategy to conduct background checks on other individuals in a family child care home. ACF expects that Tribal Lead Agencies will conduct some components of a background check for these individuals.

We may also grant flexibility to Tribes around the disqualifying crimes. We will not approve any approaches that ask for flexibility around violent crimes or crimes against children. Tribes may also request flexibility around the requirement to carry out background check requests within 45 days. In many cases, Tribes must rely on State systems, which may extend the background check process.

We expect Tribes to comply with the background check requirements to the best of their abilities and will continue to work with Tribes to provide guidance, support, and technical assistance. Background checks continue to be a vital instrument in safeguarding children's health and safety. Tribal alternative approaches must be able to justify how they are appropriately comprehensive and protect the health and safety of children in child care.

Certificate program. At § 98.83(e) of this final rule, Tribes that receive medium or small allocations are exempt from operating a certificate program. We recognize that small Tribal grantees may not have sufficient resources or infrastructure to effectively operate a certificate program. In addition, many smaller Tribes are located in less-populated, rural communities that frequently lack the well-developed child care market and supply of providers that is necessary for a certificate program. Tribes that receive large allocations will still be required to offer all categories of care through a certificate program.

Under the previous regulations, Tribes receiving smaller CCDF grants were exempt from operating a certificate program. The dollar threshold for determining which Tribes were exempt from operating a certificate program was established by the Secretary. It was set at $500,000 in 1998 and has not changed. By exempting Tribes receiving medium or small allocations from operating a certificate program, we are effectively raising the dollar threshold to $1 million. As discussed earlier, we consider medium allocations to be grants between $250,000 and $1 million and small allocations to be grants of less than $250,000. This expands the number of Tribes that are exempt from operating a certificate program. This higher threshold will allow Tribes with smaller CCDF allocations to focus on implementing the new requirements in this final rule, specifically concentrating on the health and safety and quality requirements. Please see the earlier discussion of the Tribal CCDF framework for more information and a discussion of the comments received.

Small allocations requirements. Tribes receiving the smallest CCDF allocations should not be subject to the same requirements as the Tribes receiving larger grant awards. Therefore, in this final rule, ACF is exempting Tribes receiving small allocations (less than $250,000) from the majority of the CCDF requirements to give these Tribes more flexibility in how they spend their CCDF funds and to focus these funds on health and safety and quality spending. At § 98.83(f), we require that Tribal Lead Agencies receiving small allocations spend their CCDF funds in alignment with the goals and purposes of CCDF as described in § 98.1. These Tribal Lead Agencies must also comply with the health and safety requirements, monitoring requirements, background checks requirements, and quality spending requirements. The regulatory language at § 98.83(f) defines the only CCDF provisions that apply to Tribes with small allocations.

These limited requirements allow Tribes with small allocations the flexibility to spend their CCDF funds in ways that would most benefit their communities. Tribes could choose to spend all of their CCDF funds on quality activities, or they could invest all of their funds into a Tribal CCDF-operated center. These Tribes are also required to meet the health and safety requirements, including the monitoring and background check requirements, as discussed earlier. In addition, Tribes with small allocations need to define Indian child and Indian reservation or tribal service area as they relate to eligibility. Tribes that receive small allocations also continue to be required to meet the fiscal, audit, and reporting requirements in the rule. To align with these limited CCDF requirements, Tribes with small allocations will complete an abbreviated Plan, as discussed earlier. This approach balances increased flexibility with accountability, and ACF encourages these Tribes to focus their CCDF spending on ensuring health and safety and quality for children in child care.

Comment: One commenter asked ACF to remove language at § 98.83(f)(11) that allows ACF to require "any other requirement established by the Secretary."

Response: We declined to remove this regulatory language from the final rule. We reserve the option to require additional requirements described in this final rule. If ACF chooses to exercise this option, we will inform Tribes in advance and will engage in formal consultation.

Quality improvement activities. All Tribes and Tribal organizations are subject to the quality spending and quality improvement activities requirements described at § 98.83(g) and § 98.53. The old regulations at § 98.83(f) exempted Tribes and Tribal organizations with smaller allocations (total CCDF allocations less than $500,000) from the requirement to spend four percent on quality activities. We amended § 98.83(f) by deleting paragraph (3) so that all Tribes, regardless of their allocation size, are now required to meet quality spending requirements included at § 98.83(g).

The Act requires State and Territory Lead Agencies to spend increasing minimum amounts on quality activities, reaching nine percent in FY 2020. As described earlier, Tribal Lead Agencies have a slightly different phase-in period, so that Tribes will be spending increasing amounts to reach nine percent by FY 2022. In addition, Tribal Lead Agencies receiving large or medium allocations must spend at least three percent on quality activities to support infants and toddlers. Tribes with small allocations are exempt from this requirement. The minimum quality expenditures are considered baselines; Tribal Lead Agencies may spend a larger percentage of funds on quality, as described at § 98.83(g)(3).

Comment: Overall, Tribal commenters supported the quality spending requirements. A couple of commenters were concerned that spending increasing percentages of CCDF funds on quality improvement activities would limit the funds for direct services and suggested that the minimum quality percentages should be based on the size of a Tribe's allocation.

Response: We are pleased that Tribal commenters were supportive of this new requirement. A primary goal of this final rule is to promote high-quality child care to support children's learning and development. We want to ensure that Indian children and Tribes benefit from the increased recognition of the importance of high-quality child care. As such, we will not be limiting the quality spending percentages based on the size of the Tribe's allocation. Because the quality requirement is applied as a percentage of the Tribe's CCDF expenditures, the amount required will be relatively small for Tribes with small allocations.

There are a wide range of quality improvement activities that Tribes have the flexibility to implement, and the scope of these efforts can be adjusted based on the resources available so that even smaller Tribal Lead Agencies can effectively promote the quality of child care. Most Tribal Lead Agencies are likely already engaged in activities that count as quality improvement. We will provide technical assistance to help Tribes identify current activities that may count towards meeting the quality spending requirement, as well as appropriate new opportunities for quality spending.

The revisions to § 98.53 (Activities to Improve the Quality of Child Care), discussed earlier in this preamble, provide a systemic framework for organizing, guiding, and measuring progress of quality improvement activities. We recognize that this systemic framework may be more relevant for States than for many Tribes, given the unique circumstances of Tribal communities. However, Tribes may implement selected components of the quality framework at § 98.53, such as training for caregivers, teachers, and directors or grants to improve health and safety.

The revisions to § 98.53 in no way restrict Tribes' ability to spend CCDF quality dollars on a wide range of quality improvement activities. As is currently the case, these activities could include: Child care resource and referral activities; consumer education; grants or loans to assist providers; training and technical assistance for providers and caregivers; improving salaries of caregivers, teachers and directors; monitoring or enforcement of health and safety standards; and other activities to improve the quality of child care, including native language lessons and cultural curriculum development. While Tribes have broad flexibility, to the degree possible, Tribes should plan strategically and systemically when implementing their quality initiatives in order to maximize the effectiveness of those efforts.

In addition, we encourage strong Tribal-State partnerships that promote Tribal participation in States' systemic initiatives, as well as State support for Tribal initiatives. For example, Tribes and States can work together to ensure that quality initiatives in the State are culturally relevant and appropriate for Tribes, and to encourage Tribal child care providers to participate in State initiatives, such as QRIS and professional development systems.

Comment: Two commenters suggested that Tribes should be exempt from the three percent infant and toddler quality spending requirement because some Tribes only deliver after-school or school age services.

Response: In the final rule, Tribes receiving large and medium allocations are subject to the requirement to spend three percent on quality activities for infants and toddlers. Tribes have previously been exempt from the targeted fund requirement relating to infants and toddlers under annual appropriations law. However, infants and toddlers are an underserved population, and therefore, it is important that quality dollars are directed to increase the quality of their care. In addition, in accordance with § 98.16(x), Tribes receiving large and medium allocations are expected to describe in their Plans the strategies used to increase supply and improve the quality of child care services for children in underserved areas, infants and toddlers, children with disabilities, and children who receive care during nontraditional hours. Tribal Lead Agencies can use infant and toddler quality dollars as a strategy to increase supply and improve the quality of child care service for infants and toddlers.

The final rule exempts small allocation Tribes from this requirement because many of these Tribes have built programs around school age and after-school care. However, we do strongly encourage these Tribes to consider spending quality funds to support infants and toddlers.

Base amount. In the NPRM, OCC proposed to increase the base amount from $20,000 to $30,000, starting in FY 2017, to account for inflation that has eroded the value of the base amount since it was originally established in 1998. Each year, Tribal CCDF grantees' CCDF allocations are based on a Discretionary base amount, as well as a Discretionary and Mandatory amount based on the number of children submitted in the child count.

Comment: We received mixed comments on whether the base amount should be raised to $30,000. Several commenters suggested that a cap should be placed on the total base amount that Tribal consortia can receive in order for a more equitable distribution of funds. Other commenters were concerned that the increased base amount would decrease the per child amount.

Response: We will be going forward with our proposal to increase the base amount starting in FY 2017. Tribal commenters were correct that an increase in the Discretionary base amount will result in a lower Discretionary per child amount than would occur without the change in base amount. An increase in the base amount benefits smaller Tribes and consortia. Larger Tribes will receive less funding then they would have in the absence of this change.

We also intend, to the extent possible, to increase the Tribal set-aside to hold all Tribes harmless so that no Tribe will receive a decrease in funds.

The base amount is not included in regulation and does not require regulatory change. ACF may continue to adjust the base amount in the future, following consultation with Tribes.

Comment: Commenters asked for clarification in how the Discretionary base amount interacts with the new requirement that Tribes receiving large and medium allocations must spend 70 percent of their CCDF Discretionary funds (after reserving the required amount for quality activities) on direct services.

Response: The final rule includes language at § 98.83(h) exempting the base amount from the 70 percent direct services requirement. In addition, pre-existing policy exempts the base amount from the administrative cost limitation and the quality expenditure requirements.

As noted by the commenters, Tribes receiving large and medium allocations are subject to the requirement at § 98.50(f) that requires Lead Agencies to reserve from their CCDF Discretionary funds the required minimum quality expenditures. From the leftover funds, these Tribal Lead Agencies must spend not less than 70 percent to fund direct services. This requirement is described at greater length in the preamble of Subpart F. Tribes receiving small allocations are exempt from this requirement.

§ 98.84 Construction and Renovation of Child Care Facilities

Section 98.84 describes the procedures and requirements around Tribal construction or renovation of child care facilities. The CCDBG Act of 2014 reaffirmed Tribes' ability to request to use CCDF funds for construction or renovation purposes. Section 658O(c)(6)(C) of the Act continues to disallow the use of CCDF funds for construction or renovation if it will result in a decrease in the level of child care services. However, the Act now allows for a waiver for this clause if the decrease in the level of child care services is temporary. A Tribe will also need to submit a plan to ACF demonstrating that, after the construction or renovation is completed, the level of child care services will increase or the quality of child care services will improve. In order for a Tribe to use CCDF funds on

construction or renovation while decreasing the level of direct services, the Tribe must certify that, after the construction is completed, the number of children served will increase or the quality of care will increase. The final rule reiterates this language from the Act at § 98.84(b)(3).

Comment: One commenter asked ACF to define through regulation a definition for the length of time that a decrease in direct services may be considered temporary.

Response: We declined to define a temporary decrease in the level of direct services in this final rule. ACF will issue a revised Program Instruction to describe the application process for using CCDF funds on construction or renovation. This Program Instruction will also be updated to reflect the new requirements in the Act and will address the length of time that a decrease in direct services may be considered temporary. The Program Instruction is used by ACF to expand upon and further describe the statutory and regulatory requirements. In the event that the CCDF regulations do not address a specific issue, then we look to Head Start and HHS's generally-accepted construction and renovation guidelines.

Subpart J—Monitoring, Non-Compliance, and Complaints

Subpart J contains provisions regarding HHS monitoring of Lead Agencies to ensure compliance with CCDF requirements, processes for examining complaints and for determining non-compliance, and penalties and sanctions for non-compliance. In this final rule we added several technical changes at § 98.92 to align the regulations with the penalties and sanctions requirements in effect for determining non-compliance.

§ 98.92 Penalties and Sanctions

Previously-existing regulations allow HHS to impose penalties and other appropriate sanctions for a Lead Agency's failure to substantially comply with the Act, the implementing regulations, or the Plan. Such penalties and sanctions may include the disallowance or withholding of CCDF funds in accordance with § 98.92. These regulations remain in effect.

In addition, the final rule adds a new provision at § 98.92(b) in accordance with two penalties added by the reauthorization of the Act. New section 658E(c)(3)(B)(ii) requires HHS to annually prepare a report that contains a determination about whether each Lead Agency uses CCDF funding in accordance with priority for services provisions. These priority provisions are reiterated at § 98.46(a) of these regulations, and require Lead Agencies to give priority to children with special needs, children from families with very low incomes, and children experiencing homelessness. The Act requires HHS to impose a penalty on any Lead Agency failing to meet the priority for services requirements. A new regulatory provision at § 98.92(b)(3) implements this penalty.

In accordance with the Act, the final rule provides that a penalty of five percent of the CCDF Discretionary Funds shall be withheld for any Fiscal Year the Secretary determines that the Lead Agency has failed to give priority for service in accordance with § 98.44. This penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty, and the penalty will not be applied if the Lead Agency corrects its failure to comply and amends its CCDF Plan within six months of being notified of the failure. The Secretary may waive a penalty for one year in the event of extraordinary circumstances, such as a natural disaster. The second new penalty was added by section 658H(j)(3) of the Act and is related to the new criminal background check requirements. This final rule adds this penalty through new regulatory language at § 98.92(b)(4). In accordance with the Act, the final rule provides that a penalty of five percent of the CCDF Discretionary Funds for a Fiscal Year shall be withheld if the Secretary determines that the State, Territory, or Tribe has failed to comply substantially with the criminal background check requirements at § 98.43. This penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty, and this penalty will not be applied if the State, Territory or Tribe corrects the failure before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary.

Subpart K—Error Rate Reporting

On September 5, 2007, ACF published a Final Rule that added subpart K to the CCDF regulations. This subpart established requirements for the reporting of error rates in the expenditure of CCDF grant funds by the 50 States, the District of Columbia, and Puerto Rico. The error reports are designed to implement provisions of the Improper Payments Information Act of 2002 (Pub. L. 107–300) and the subsequent Improper Payments Elimination and Recovery Act (Pub. L. 111–204). This final rule retains the error reporting requirements at subpart K. In addition to the regulatory requirements at subpart K, details regarding the error rate reporting requirements are contained in forms and instructions that are established through the Office of Management and Budget's (OMB) information collection process. These program integrity efforts help ensure that limited program dollars are going to low-income eligible families for which assistance is attended.

§ 98.100 Error Rate Reporting

Interaction with eligibility requirements. This final rule includes regulatory language at § 98.100(d) defining an improper payment to clarify that, because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible between redeterminations as described in § 98.20(a)(1), any payment for such a child shall not be considered an error or improper payment due to a change in the family's circumstances, as set forth at § 98.21(a) and (b). Several State commenters supported this provision. We added the reference to § 98.21(b) in the final rule to include the graduated phase-out period. If a State chooses to adjust co-payments during the graduated phase-out, failure to properly do so may potentially result in improper payments.

Corrective action plan. This final rule adds § 98.102(c) to require that any Lead Agency with an improper payment rate that exceeds a threshold established by the Secretary must submit a comprehensive corrective action plan, as well as subsequent reports describing progress in implementing the plan. This is a conforming change to match new requirements for corrective action plans that were contained in the recent revisions to the forms and instructions. The corrective action plan must be submitted within 60-days of the deadline for submission of the Lead Agency's standard error rate report required by § 98.102(b).

VI. Regulatory Process Matters

a. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act, (5 U.S.C. 605(b)) requires federal agencies to determine, to the extent feasible, a rule's economic impact on small entities, explore regulatory options for reducing any significant economic impact on a substantial number of such entities, and explain their regulatory approach. This final rule will not result in a significant economic impact on a

substantial number of small entities. This rule is intended to implement provisions of the Act, and is not duplicative of other requirements. The reauthorization of the Act and these implementing regulations are intended to better balance the dual purposes of the CCDF program by adding provisions that ensure that healthy, successful child development is a consideration for the CCDF program (*e.g.*, preserving continuity in child care arrangements; ensuring that child care providers meet basic standards for ensuring the safety of children, etc.).

The primary impact of the Act and this final rule is on State, Territory, and Tribal CCDF grantees because the rule articulates a set of expectations for how grantees are to satisfy certain requirements in the Act. To a lesser extent the rule would indirectly affect small businesses and organizations, particularly family child care providers, as discussed in more detail in the Regulatory Impact Analysis below. In particular, requirements for comprehensive criminal background checks and health and safety training in areas such as first-aid and CPR may have an impact on child care providers caring for children receiving CCDF subsidies. However, the rule will not have a significant economic impact on a substantial number of child care providers.

The estimated cost of a comprehensive criminal background check is $55 per check. For the required health and safety training, a number of low-cost or free training options are available. Many States use CCDF quality dollars or other funding to fully or partially cover the costs of background checks and trainings. The health and safety provisions in the rule will primarily affect those CCDF providers currently exempt from State licensing that are not relatives—which account for only about 22 percent of CCDF providers nationally. Finally, we note that the final rule contains many provisions that will benefit child care providers by providing more stable funding through the subsidy program (*e.g.*, eligibility provisions that promote continuity and improved payment practices).

b. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct federal agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Orders require federal agencies to submit significant regulatory actions to the Office of Management and Budget (OMB) for approval. Section 3(f)(1) of Executive Order 12866 defines "significant regulatory actions", generally as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We estimate that the reauthorized Act and this NPRM will have an annual effect on the economy of more than $100 million. Therefore, this final rule represents a significant regulatory action within the meaning of section 3(f)(1) of Executive Order 12866. Given both the directives of Executive Orders 12866 and 13563 and the importance of understanding the benefits, costs, and savings associated with these proposed changes, we describe the costs and benefits associated with the proposed changes and available regulatory alternatives below in the Regulatory Impact Analysis.

c. Regulatory Impact Analysis

We have conducted a Regulatory Impact Analysis (RIA) to estimate and describe expected costs and benefits resulting from the reauthorized Act and this final rule. This included evaluating State-by-State policies in major areas of policy change, including monitoring and inspections (including a hotline for parental complaints), background checks, training and professional development, consumer education (including Web site and consumer statement), quality spending, minimum 12-month eligibility and related provisions, increased subsidies, and supply building (see Table 1).

The State policies described in this RIA, including information from the FY 2014–2015 CCDF Plans, represent policies that were in place prior to the reauthorization of the Act. This is consistent with Office of Management and Budget (OMB) Circular A–4 which indicates that in cases where substantial portions of a rule simply restate statutory requirements that would be self-implementing, even in the absence of the regulatory action, the RIA should use a pre-statute baseline (*i.e.*, comparison point for determining impacts).

In conducting the analysis, we also took into account the statutory effective dates for various provisions. A number of States have already begun changing their policies toward compliance with the CCDBG Act of 2014, which was enacted in November of 2014, but data on those changes is not yet available and are not factored into this analysis.

TABLE 1—OVERVIEW OF MAJOR PROVISIONS

	Relevant provisions of CCDBG Act	Provisions of final rule
Health and Safety		
Background checks	658H	§ 98.43.
Monitoring and inspections (including a hotline for parental complaints)	658E(c)(2)(J), 658E(c)(2)(C)	§ 98.42, § 98.32.
Training and Professional Development (Pre-service, orientation, and ongoing training).	658E(c)(2)(G), 658E(c)(2)(I)	§ 98.44.
Consumer Education		
Consumer education website	658E(c)(2)(D), 658E(c)(2)(E)	§ 98.33.
Consumer statement	658E(c)(2)(D), 658E(c)(2)(E)	§ 98.33.

TABLE 1—OVERVIEW OF MAJOR PROVISIONS—Continued

	Relevant provisions of CCDBG Act	Provisions of final rule
Quality Spending		
Quality, infant and toddler spending	658G	§§ 98.53, 98.50(b).
Continuity of Care		
Minimum 12-month eligibility and related provisions	658E(c)(2)(N)	§§ 98.20, 98.21.
Increased subsidy and supply building		
Increased subsidy	658E(c)(4), 658(c)(2)(S)	§ 98.45.

Need for regulatory action. CCDF has far reaching implications for America's low-income children, and the reauthorized Act and this final rule shine a new light on the role that child care plays in child development and making sure children are ready for school. The Act and this final rule take important steps toward ensuring that children's health and safety is being protected in child care settings. Both the Department of Health and Human Services' (HHS) Office of Inspector General (OIG) and the Government Accountability Office (GAO) have identified serious deficiencies with health and safety protections for children in child care. Prior to reauthorization of the Act, there was a wide range of health and safety standards across States. For example, ten States lacked even the most basic first aid and CPR training requirements, and in some cases, this approach to health and safety did not include vital standards in areas such as safe sleep practices and recognition and reporting of suspected child abuse and neglect.

In addition, without any federal monitoring requirement prior to CCDBG reauthorization, 24 States allowed license-exempt family child care providers to self-certify that they met health and safety requirements without any documentation or other verification. As mentioned earlier, the importance of monitoring was highlighted in a recent series of Department of Health and Human Services' (HHS) Office of Inspector General (OIG) audits that identified deficiencies with health and safety protections for children in child care with CCDF providers in several States, including in Arizona, Connecticut, Florida, Louisiana, Maine, Michigan, Minnesota, Pennsylvania, Puerto Rico, and South Carolina. As discussed throughout this final rule, minimum health and safety standards included in the reauthorized Act and this rule are essential to help prevent children from being exposed to child care settings that put their health and safety at risk. The importance of such standards and the inherent risks are discussed at length in *Caring for Our Children* (*Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs, 3rd Edition,* which was produced with the expertise of researchers, physicians, and practitioners. (American Academy of Pediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education. (2011).

Parental choice is a foundational tenet of the CCDF program—to ensure parents are empowered to make their own decisions regarding the child care that best meets their family's needs. Prior to reauthorization, CCDF rules required Lead Agencies to promote informed child care choices by collecting and disseminating consumer education information to parents and the general public. Over the years, economists have researched and written about the problem of information asymmetry in the child care market and the resulting impact both on the supply of high-quality care and a parent's ability to access high-quality care. (Blau, D., The Child Care Problem: An Economic Analysis, 2001; Mocan, N., The Market for Child Care, National Bureau of Economic Research, 2002) In order for parental choice to be meaningful, parents need to have access to information about the choices available to them in the child care market and have some way to gauge the level of quality of providers. The Act and this final rule strengthen consumer education requirements to make information about child care providers more accessible and transparent for parents and the general public.

Stable relationships between a child and their caregiver are an essential aspect of quality. Yet, under current policies, clients may "churn" on and off of CCDF assistance every few months, even when they remain eligible. Some studies show that many families appear to remain eligible for the subsidies after they leave the program, suggesting that child care subsidy durations also are likely influenced by factors unrelated to employment (Grobe, D., R.B. Weber and E.E. Davis (2006). Why do they leave?: Child care subsidy use in Oregon.). Congress and ACF are concerned that State subsidy policies can make it overly burdensome for parents to keep their subsidy, or are not flexible enough to allow for temporary or minor changes in a family's circumstances. This is supported by a study that featured a series of interviews with State and local child care administrators and identified a number of administrative practices that appear to reduce the duration of child care subsidy usage (Adams, G., K. Snyder and J.R. Sandfort, Navigating the child care subsidy system: Policies and practices that affect access and retention. Urban Institute, 2002) Through interviews with "state and local child care administrators and key experts, and focus groups with caseworkers, parents, and providers" in 12 States, the study found that families often faced considerable administrative burden when trying to apply for or recertify their eligibility status. For example, families sometimes had to interact with more than one agency during the application process, had to make more than one trip to an administrative office, and sometimes had to wait for weeks or months to get an appointment with a social worker. In addition, families receiving Temporary Assistance for Needy Families (TANF) sometimes had additional difficulties with redetermination because of the temporary nature of their employment or training activities. The study also found that agencies had different policies regarding the ways in which families could recertify their eligibility status including mail, phone, or fax. Parents often find it difficult to navigate administrative processes and paperwork required to maintain their eligibility when policies are inflexible to changes

in a family's circumstances. Policies that make it difficult for parents to keep their subsidy threaten the employment stability of parents and can disrupt children's continuity of care. This final rule establishes a number of family-friendly policies that benefit CCDF families by promoting continuity in subsidy receipt and child care arrangements.

Changes made by the CCDBG Act of 2014 and this final rule, consistent with the revised purposes of the Act, are needed to: Protect the health and safety of children in child care; help parents make informed consumer choices and access information to support child development; provide equal access to stable, high-quality child care for low-income children; and enhance the quality of child care and the early childhood workforce.

Commenters on the proposed rule who had overall reservations about the cost of the Act were typically concerned with the impact of redirecting limited funds to new requirements, including the potential loss of child care slots if funding is diverted from direct services. One commenter said that "few States have a budget environment capable of absorbing the estimated costs of compliance." Others pointed to a need for additional resources in order to fully realize the expectations of the CCDBG reauthorized Act and this final rule. One commenter representing a State child care program said that "in order to advance the worthy goals of the CCDBG Act of 2014, the federal government must either provide sufficient federal resources to fund the envisioned transformation in a prescriptive manner, incrementally increase prescriptive compliance as adequate funds become available to reach the goals or allow States to use available resources with maximum flexibility to achieve results." Some States did submit their own cost calculations and some focused on the financial impact of providing minimum 12-month eligibility and other family-friendly policies. While we do address the potential impact of these policies below, these are not considered costs for the purposes of this analysis, but rather are considered a reallocation of resources rather than a new cost.

A number of national organizations expressed these funding concerns indicating that "achieving the goals of the CCDBG Act to improve the health, safety, and quality of child care and the stability of child care assistance will require additional resources. Congress made a down payment on funding in the recent FY 2016 omnibus budget; however, additional investments will be necessary to ensure the success of the new law and to address the gaps that already exist in the system."

Concerns about costs and tradeoffs are vital to the conversation about implementing the Act and this regulation. Throughout this final rule, we address the individual concerns raised about specific provisions and make adjustments where necessary. Whereas all policies have been discussed in detail in the body of the preamble above, this Regulatory Impact Analysis focuses on quantifying those policies that would have an impact on the overall cost to society of the Act and the final rule. As detailed below, the large majority of costs are related to items explicitly required by the Act. There are places in the final rule where we clarify language from the Act to ensure that the program is implemented in a way that is consistent with the intent of the law.

For the purposes of estimating the costs of these new requirements, the analysis makes a number of assumptions. In the proposed rule, we welcomed comment on all aspects of the analysis, but throughout the narrative, we specifically requested comment in areas where there is uncertainty. While, as stated above, a number of commenters did express general concerns about the overall cost of the proposal, few provided specific comments on the assumptions made by the Regulatory Impact Analysis. Those specific comments that we did receive are included in the analysis below and largely supported the underlying assumptions of our original analysis.

One overarching assumption that is consistent across all the estimates is that we are assuming that the current caseload of children in the CCDF program (which is a monthly average of approximately 1.4 million children) remains constant. Due to inflation and the potential for erosion in the value of the subsidy over time, funding increases will be necessary to maintain the caseload and avoid slot loss; however, those changes are not reflected in this RIA since they are not directly associated with the Act or the final rule.

While the estimate cannot fully predict how States and Territories will design policies in response to these new requirements or who would be responsible for paying certain costs, we do recognize that absent additional funding, these costs will impact the CCDF caseload. This point is discussed in greater detail below.

A. Analysis of Costs

In our analysis of costs, we considered any claims on resources that would be made that would not have occurred absent the rule. This includes new requirements that are merely reiterating changes made in the reauthorized CCDBG Act of 2014, which were effective upon the date of enactment of November 19, 2014. This RIA discusses the potential impact of the following major provisions in the statute and in the final rule:

- Monitoring and inspections (including State hotlines for parental complaints);
- background checks;
- health and safety training;
- consumer education (Web site and consumer statement);
- minimum 12-month eligibility periods;
- administrative and IT/infrastructure costs; and
- increased subsidy rates per child associated with improving continuity and equal access.

We conducted a State-by-State analysis of these major provisions. It should be noted that due to insufficient data, the health and safety portions of this cost estimate in the NPRM did not include Territories and Tribes. This omission was not meant to minimize the fact that requirements of the Act and the final rule will still have a significant programmatic and financial impact on Territories and Tribes. In the proposed rule, we invited public comment on the anticipated financial impact of the Act and the proposed rule on Territories and Tribes, but did not receive enough additional information to conduct a thorough analysis of costs for Territories and Tribes. However, to account for these costs in the RIA, we estimating the cost using the percentage of funding allocated to Territories and Tribes and applying that percentage to the cost estimate for States. For Territories, their funding allocation amounts to 0.5 percent and for Tribes, this is 2.0 percent of CCDF funding. By applying these percentages to the cost estimate for States, we are assuming that the combined cost of meeting the new requirement for Territories and Tribes also equals approximately 2.5% of the cost for States. It should be noted that the overall Tribal allocations amounts to slightly more than 2.0 percent due to funding level changes included in the CCDBG Act, but given that Tribes are not subject to all new requirements and have significant flexibility in some areas (particularly for medium and small allocation Tribes), we believe that 2.0 percent is a reasonable percentage to use for this estimate. The total annual money and opportunity cost for Territories and Tribes (using a 3 percent discount rate) is approximately $7.5 million. This is an estimated total of $66

million dollars over the full ten year period of the cost estimate. Additionally, for Territories and Tribes the estimated transfer costs related to increased supply building would be $20.9 million per year (using a 3 percent discount rate) or an estimated total of $184.3 million over the full ten year period of the cost estimate.

In order to determine State practices prior to the passage of the CCDBG Act of 2014, we relied on information from State-submitted FY 2014–2015 CCDF Plans, as well as the *2011–13 Child Care Licensing Study* (prepared by the National Association for Regulatory Administration). We used data on requirements within a State by child care setting type (center, family home, group home, child's home) and licensing status, to project costs based on specific features of a State's requirements as reported at the time. If a State already met or exceeded an individual requirement, we assumed no additional cost associated with the final rule. When possible, if a State partially met the requirement we applied a partial implementation cost. For example, a State that has an annual monitoring requirement for its licensed centers would be assigned no additional cost to implement that specific part of the regulatory requirement.

For example, some States already conduct comprehensive background checks that include all components of a comprehensive background check required by law except an FBI fingerprint check. Prorated costs were assigned accordingly (assumptions about partial costs are explained in greater detail in the discussions below). The final rule offers significant flexibility in implementing various provisions, therefore in the RIA we identified a range of implementation options to establish lower and upper bound estimates and chose a middle-of-the-road approach in assessing costs.

This RIA takes statutory effective dates into account within a 10-year window. The analysis and accounting statements distinguish between average annual costs in years 1–5 during which some of the provisions will be in varying stages of implementation and the average annual ongoing costs in years 6–10 when all the requirements would be fully implemented (10-year annualized costs and total present value costs will also be presented throughout). Some costs will be higher during the initial period due to start-up costs, such as building a consumer Web site, and costs associated with bringing current child care providers into compliance with health and safety requirements. However, significant costs, such as the requirement to renew background checks every five years, would not be realized until later. These compounding requirements, including the cost of increasing subsidy rates, account for the escalation in costs in the out years of the analysis.

Throughout this RIA, we calculate two kinds of costs: *Money costs* and *opportunity costs* (Note: The analysis also considers "transfers", which are discussed in the section on Estimated Impacts of Increased Subsidy; see Table 8 below for additional details). Any new requirements that have budgetary impacts on States or involve an actual financial transaction are referred to as *money costs*. For example, there is a fee associated with conducting a background check, which is a money cost regardless of who pays for the fee. For purposes of this analysis, we examined what additional resource claims would be made as a result of the reauthorized Act and final rule regardless of who incurs the cost or from what source it is paid (which varies widely by State). In some instances, money costs will be incurred by the State and may require States to redistribute how they use CCDF funds in a way that has a budgetary impact. In other cases, money costs will be incurred by child care providers or parents.

Alternatively, claims that are made for resources where no exchange of money occurs are identified as *opportunity costs*. Opportunity costs are monetized based on foregone earnings and would include, for example, a caregiver's time to attend health and safety trainings when they might otherwise be working.

Each year, more than $5 billion in federal funding is allocated to State, Territory, and Tribal CCDF grantees. Activities in the final rule are all allowable costs within the CCDF program and we expect many activities to be paid for using CCDF funds. For example, although some States may supplement funding, others may choose to redistribute funding from a current use to address start-up costs or new priorities. As discussed above, we received a number of comments from States in response to the proposed rule that, in the absence of additional funding, meeting requirements in the final rule would result in a reduction in the CCDF caseload. Therefore, we anticipate some money costs will result in this type of re-distributive budgetary impact within the CCDF program.

However, to make the costs of the rule concrete, we provide analysis on the economic impact of the rule if the child care caseload were to remain constant. While we recognize that there may be a decrease in caseload due to the financial realities of the new requirements, applying that decrease in caseload to underlying assumptions of this analysis would only lessen the estimated cost, which would result in a probable underestimate. While the costs estimated in this analysis represent the costs required, (regardless of who pays for the requirement) to meet the new requirements for the current monthly caseload of 1.4 million children, it is not, and should not be interpreted as, our projection of future caseload.

Overall, based on our analysis, annualized costs associated with these provisions averaged over a ten year window, are $235.2 million (plus an additional $59.2 million in opportunity costs) and the annualized amount of transfers is approximately $839.1 million (all estimated using a 3 percent discount rate), which amounts to a total annualized impact on States, Territories, and Tribes of approximately $1.16 billion.

This RIA represents all of the changes made between the NPRM and the final rule and other methodological refinements—with some changes increasing costs (follow-up monitoring visits, adding in an estimate for Tribes and Territories) and others decreasing the costs (removing the required use of grants and contracts). The result is an estimated increase of about $33 million per year in money costs and an increase in total annual impact from $1.1 billion in the NPRM to $1.16 billion in the final rule.

Of that amount, approximately $1.15 billion is directly attributable to the statute, with only an annualized cost of approximately $4 million (or approximately 0.3% of the total estimated impact) directly attributable to the discretionary provision of this regulation that extends the background check requirement. This RIA includes an additional estimated cost of $38 million per year for follow-up monitoring visits that was not accounted for in the version of the RIA that appeared in the NPRM. However, this is considered a natural outgrowth of the statutorily-required inspections and therefore not included in the discretionary amount because it is not attributable to a new requirement in the regulation. Compliance with these requirements will be determined through the CCDF State Plan process. Therefore, throughout this analysis we have phased in these discretionary requirements with the full costs taking effect in FY 2019 (to align with the next round of plans, which will become effective October 2018).

While this analysis does not attempt to fully quantify the many benefits of the reauthorization and this final rule, we describe the benefits qualitatively in detail and conduct a breakeven analysis to compare requirements clarified through this regulation against a potential reduction in child fatalities and injuries. Further detail and explanation on the impact of each of the provisions is available below.

1. Health and Safety Provisions

Per the new requirements in the Act, this final rule includes several provisions focused on improving the health and safety of child care. We estimated costs associated with the following three requirements: Monitoring and inspections at § 98.42; comprehensive background checks at § 98.43; and health and safety training at § 98.41(a)(2).

Implementation costs of health and safety provisions, specifically the start-up costs, will depend primarily on the number of child care providers in a State and current State practice in areas covered by the final rule. We used data from the FY 2014 ACF–800 administrative data report to estimate that approximately 269,000 providers caring for children receiving CCDF subsidies would be subject to CCDF health and safety requirements. In addition to these CCDF providers, this analysis also includes approximately 110,000 licensed providers who are not currently receiving CCDF subsidies but would be subject to the monitoring (added in the final rule) and background check and certain reporting requirements.

These figures exclude relative care providers since States may exempt these providers from CCDF health and safety requirements. According to OCC's 2014 administrative data, there are approximately 115,000 relative care providers receiving CCDF assistance. States vary widely on what they require of relatives, with 18 States/Territories requiring that relative providers meet all health and safety requirements, 4 exempting relatives for all requirements, and 34 indicating that relative providers were exempt from some but not all requirements.

It is difficult to forecast State behavior in response to new requirements since Lead Agencies have the option to exempt relatives from these requirements. Even those States that currently apply requirements to relatives may keep those requirements at current levels rather than expanding to meet new requirements. As a hypothetical, if States were to apply half of all the new health and safety requirements to half of the current number of relative providers, the annualized cost (using a 3% discount rate) would be approximately $40 million (averaged over a 10 year window). However, since applying the new requirements to relatives is not a legal requirement and we anticipate that many States will choose to maintain their relative exemptions, we are not including costs associated with relative providers in the accounting statement for this regulatory impact analysis. We did request comment on the extent to which Lead Agencies anticipate applying new requirements to relative providers and only one State responded to this request, indicating that they did "not plan to extend the new requirements to those homes where an exemption already exists."

It should be noted that, based on a longitudinal analysis of OCC's administrative data, the number of child care providers serving CCDF children has declined by nearly 50 percent between 2004 and 2014, an average decrease of 4 percent per year. The greatest decline occurred in settings legally operating without regulation, specifically family child care; however, both regulated and license-exempt child care centers also saw declines. This analysis is based on current provider counts, but assuming that the number of CCDF providers will continue to steadily decrease, this estimate of the number of providers, and resulting costs associated with implementing health and safety provisions, may be an overestimate.

Many States' licensing requirements for child care providers already meet or exceed certain components of the minimal health and safety requirements for CCDF providers in this final rule. For example, training in first-aid and CPR and background checks are commonly included as part of State licensing, with approximately 40 States already meeting this requirement for licensed providers (centers, group home, and family child care).

Many licensed CCDF providers already meet many of the other health and safety requirements as well. For example, more than 40 States already require annual monitoring of all their licensed providers, with even more already requiring pre-inspections of their licensed providers. In the case of licensed centers, more than 45 States already require pre-inspections. For those States whose licensing requirements do not meet CCDF health and safety requirements, there will be costs incurred. However, the largest cost will be incurred for those CCDF providers that are currently exempt from State licensing that are not relatives—approximately 85,000 providers nationally. (Table 2 below provides a national picture of the types of CCDF providers.) We used an expanded State-by-State version of this table to estimate costs for meeting health and safety requirements. As stated above, the final rule allows States to exempt relatives from health and safety requirements, including background checks, health and safety training, and monitoring. Therefore, ACF did not attribute any cost associated with these requirements to relative CCDF providers.

TABLE 2—SUMMARY OF CCDF PROVIDERS

[FY2014]*

Licensed CCDF providers			CCDF providers legally operating without regulation (license-exempt)					Total
Centers	Family home	Group home	Child's home (in-home)		Family and group home		Centers	
			Relative	Non-relative	Relative	Non-relative		
81,352	70,165	32,130	38,670	27,739	77,958	50,330	7,355	385,699

* Source: ACF–800, Report 13.

Monitoring and pre-inspections. The Act requires that States conduct monitoring visits for all CCDF providers including all license-exempt providers (except, at Lead Agency option, those that serve relatives). While States must have monitoring policies and practices in effect (for both licensed and license-exempt CCDF providers) no later than

November 19, 2016, the full cost of this requirement will not be in effect until 2017. Therefore, we are projecting some period of phase-in, with 25% of providers subject to monitoring in 2015 and an additional 50% (a total of 75%) subject to monitoring requirements in 2016. The costs of these requirements will be fully realized from 2017 on.

The Act specified different monitoring requirements for providers who are licensed and providers who are license-exempt.

- *For Licensed CCDF Child Care Providers*—States must conduct one pre-licensure inspection for health, safety, and fire standards and at least annual, unannounced inspections for licensed CCDF providers.
- *For License-Exempt Providers (except, at Lead Agency option, those serving relatives)*—States must conduct at least annual inspections for license-exempt CCDF providers for compliance with health, safety, and fire standards at a time determined by the State.

For this estimate, if a State reported that they conduct at least one annual monitoring visit for licensed CCDF providers (pre-licensure inspections are discussed separately below), we assumed no additional cost for those providers because it met or exceeded the frequency required by the Act and final rule. The majority of States already monitor licensed CCDF providers annually (more than 40 across all settings—centers, family child care, and group homes). A subset of States that currently have annual monitoring requirements do not conduct unannounced visits. However, we did not assign a cost for States changing their policy from announced to unannounced monitoring. We acknowledge that there may be an administrative cost to such a change, but for the purposes of this estimate, we consider that to be included in the overall administrative cost allocation discussed below. We asked for public comment on specific costs associated with moving from announced to unannounced inspections, but did not receive any.

This cost estimate takes into account three major components of the new monitoring requirements: (1) Annual monitoring of both licensed and license-exempt CCDF providers, (2) Pre-inspections for licensed CCDF providers, and (3) a Hotline for parental complaints.

The annual monitoring estimate includes the following variables analyzed on a State-by-State basis:

- *Current State Practice:* We collected State-level data from the 2014–15 CCDF State plans and the *NARA 2011–13 Child Care Licensing Study* to determine which States already met annual inspection requirements. Data was collected for the following settings: Licensed CCDF providers (family, group home, and centers) and license-exempt CCDF providers (non-relative).
- *Current Provider Counts:* Using 2014 CCDF administrative data, we collected the number of CCDF providers within each setting for each State.

Using these data we arrived at an estimate of the number of CCDF providers within each State that would newly require an annual monitoring visit. We then estimated the number of new licensing inspectors and supervisors that would be required to monitor the projected number of providers newly subject to monitoring, based on a projected caseload of child care providers for each licensing staff. To estimate the actual cost, we calculated the cost of employing (salary and overhead) the estimated number of necessary new licensing staff (inspectors and supervisors).

The Act requires States to have a ratio of licensing inspectors to child care providers and facilities that is sufficient to conduct effective inspections on a timely basis, but there is no federally required ratio. The current range of annual caseloads per licensing inspector is large, from 1:33 to 1:231. We used the following range to estimate the impact:

- *Lower bound:* 50th percentile of current licensing caseloads (weighted by the number of providers in each State), which produced an adjusted caseload of 1:126 providers per monitoring staff.
- *Upper bound:* A 1:50 ratio of providers to monitoring staff, as recommended by the National Association of Regulatory Administration.

Our final cost estimate represents the midpoint between the lower and upper bound estimate. To calculate the number of required supervisory staff, we assumed a ratio of one supervisor per seven monitoring staff, which is the current average across States as reported in the *NARA 2011–13 Child Care Licensing Study*.

To generate the actual cost associated with this staffing increase, we multiplied the number of new staff by salary and overhead costs for full-time equivalent (FTE) staff based on Bureau of Labor Statistics (BLS) data from the *National Occupation and Wage Estimates* from May 2013. The same FTE costs were applied to all States. The salary applied was $42,690 for each monitoring line staff (see Community and Social Service Specialists, All Other: Code 21–1099) and $65,750 for each supervisor (see Social and Community Service Managers: Code 11–9151), which was then multiplied by 2 to account for benefits and overhead. (Data from the Bureau of Economic Analysis's *National Income and Product Accounts* shows that in 2013, wages and salaries are approximately 50 percent of total compensation.). Using this methodology, the annualized money cost of meeting the annual monitoring requirements is $172.9 million, estimated using a 3 percent discount rate. The estimated present value cost of meeting this requirement over the 10 year period examined in this rule, using a 3% discount rate, is approximately $1.5 billion.

While not required by the Act or the final rule, we anticipate that annual monitoring in States could result in additional follow-up visits if problems were identified in the initial visit. Because we did not have data on this with which to estimate potential impacts, we asked for comment in the NPRM on the percentage of providers that would require a follow-up visit as a result of new annual monitoring visits. In response to this request, one State estimated that approximately 23% of all providers would require a new annual visit once the annual monitoring visit requirement goes into effect and another estimated that "approximately 20% of new annual monitoring inspections" would result in follow-up inspections. Despite not being an explicit requirement of the rule or statute, we believe that follow-up visits would be a natural result of the new statutory inspection requirements and are therefore including this potential cost in the final cost estimate. Assuming a 20% follow-up rate, the associated costs could be approximately $40.6 million per year (estimated using a 3% discount rate).

Opportunity costs for the monitoring requirements account for the fact that to successfully pass a monitoring visit, there would presumably be a number of administrative costs (in terms of time; an opportunity cost) for providers and caregivers. For example, providers must read the new rules, change their current practices to comply, and obtain and track paperwork to make sure they are in compliance. For the purposes of this following analysis, we made several assumptions about the amount of time required to prepare for and comply with the monitoring requirement, but we welcome comment on these assumptions. To calculate the opportunity cost of these visits, we assumed that time spent doing administrative tasks equals the length of the monitoring visit plus an additional 1.5 and 2.0 hours of preparation per

hour of the visit, for family child care and center providers respectively.

Based on one State reporting that their monitoring visits for licensure took between 2.5 and 5 hours, we used 2.5 hours as the basis for our lower bound and 4 hours as the basis for our upper bound. We used 4 hours instead of 5 for our upper bound estimate because 5 hours is the amount reported for a licensing visit, but what is required in the final rule is generally less extensive than what is generally required for licensure. As such, our lower bound estimate uses 6.25 and 7.5 hours of preparation for family child care and center providers, respectively, and our upper bound uses 10 and 12 hours of preparation for family child care and center providers, respectively.

Two States provided their estimated time spent on monitoring. One State estimated that they currently "expend 10 hours of staff time per visit" and another cited a study they conducted in 2006 that found "day care licensing staff indicates that an average of 9.35 hours is spent preparing for, traveling to, and conducting a monitoring inspection." Since both of these figures are within the range of the assumptions used for our analysis, we are keeping the assumptions the same for the final rule.

According to BLS, for child care workers, one hour equals $18.80 after accounting for benefits and overhead (we include overhead because administrative preparation time would most likely occur during work hours). We estimated the opportunity cost of preparation time for monitoring to be an average of $8.1 million annually (estimated using a 3% discount rate) during the two-year phase-in period (assumes States begin to ramp-up monitoring, but not fully implemented) and an annualized opportunity cost of $14.3 million (estimated using a 3% discount rate) over the entire 10 year window. Note that the phase-in period discussed here covers a two year period and is different from the phase in period in the table below, which shows a phase-in period of 5 years (after which *all* requirements would be fully implemented).

Some proportion of providers will require remedial work to meet CCDF health and safety requirements after an annual visit. For example, a provider may be out of compliance with building safety or not have up-to-date immunization records, and costs in terms of time as well as material resources would be necessary to come into compliance. However, it is difficult to quantify these effects because the specific remediation required will vary by provider and other circumstances. Therefore, we did not attempt to monetize the cost of providers' remediation efforts. In addition, there are also benefits to be reaped (in terms of child health and safety) as providers makes changes to come into compliance with health and safety requirements as a result of this rule, but that are not quantified in this analysis.

Next we estimate cost of pre-licensure inspections required of licensed CCDF providers by the Act. Using the same methodology that we used for annual monitoring, we determined how many States already met this requirement and used CCDF administrative data to determine the number of licensed providers (by setting type) that did not previously but would now require pre-licensure visits. The final rule allows States to grandfather all existing providers—thus there is no start-up cost or backlog of providers that need a pre-inspection. There are not good data to estimate how many new providers a State would need to pre-inspect on an annual basis, but anecdotal evidence suggests the number is relatively small. Of the States that do not currently require pre-inspections (1 for centers, 6 for group homes, and 7 for family child care), we estimated (based on information shared by a few States) that a lower bound of five percent of family child care and four percent of center care would be new each year (lower bound). For the upper bound, we estimate that 12 percent of family child care and 7 percent of child care centers would be new each year.

Using a caseload of 88 providers per monitoring staff (the midpoint of the 50th percentile of current caseload data and the recommended caseload of 50:1), and using the same salary and benefits data as the monitoring estimates, the ongoing average annual pre-inspection costs are estimated to be approximately $0.7 million (estimated using a 3% discount rate), but would not begin until 2017. The estimated present value cost of meeting this requirement over the 10 year period examined in this rule, using a 3% discount rate, is approximately $6.2 million.

Monetized caregiver time to prepare for pre-inspections is considered an opportunity cost and is estimated to be approximately $200,000 annually, a relatively small amount because this only applies to new licensed providers in the few States that don't already require pre-licensure inspections. Though some of the opportunity cost would be incurred prior to the actual inspection visit, for the purposes of this estimate, we considered all costs for pre-inspections as beginning after the end of the phase-in period. We used the same methodology used to calculate annual inspections to determine the opportunity cost of pre-inspections.

However, recognizing that preparing for an initial licensing inspection may require additional time, we used the midpoint of the estimate time for an annual visit and doubled it for an estimated 16.25 hours for family child care and group homes and 19.5 hours for centers. We asked for comment on these assumptions, but did not receive specific information on the amount of time required to prepare for and participate in a pre-inspection (rather than a regular inspection).

This cost analysis also includes the "parental complaint hotline" as part of the monitoring requirements. The final rule requires at § 98.32(a) that Lead Agencies establish or designate a hotline or similar reporting method for parents to submit complaints about child care providers. Lead Agencies have flexibility in how they implement this requirement, including whether the system is telephonic or through a similar reporting process, whether the hotline is toll-free, and whether the hotline is managed at the State or local level. Based on an examination of several States that already have comparable hotlines in place, this estimate for the parental complaint hotline includes multiple components that might be associated with the implementation and maintenance of a telephonic hotline.

These components include the one-time purchase of an automatic call distribution (ACD) system at $45,000; the use of a digital channel on a T1 line ranging from $204 to $756 per year; 2,000 minutes of incoming call time at $0.06 per minute; and salary and benefits for one FTE to manage the hotline at $67,000. States vary in how they collect parental complaints. According to an analysis of the FY 2014–2015 CCDF Plans and review of State child care and licensing Web sites, 18 States/Territories have a parental complaint hotline that covers all CCDF providers, 22 States/Territories have a parental complaint hotline that covers some child care providers, and 16 States/Territories do not have a parental complaint hotline. (Note that unlike the other health and safety provisions, this estimate does include Territories).

States that had hotlines for both licensing and CCDF were considered as meeting the full requirement for a parental complaint hotline and had no additional costs. States that only had one hotline (*e.g.*, only for licensed providers) were considered as partially meeting the requirement for the hotline and had 0.5 FTEs applied. The full

amount was applied to States that did not have anything in place that met the requirements of the hotline.

We used a range of options to estimate the impact of the parental complaint hotline requirement based on the cost of the TI line and whether the hotline is toll-free and chose the mid-point as the primary estimate. Using this methodology, the estimated present value cost of meeting this requirement over the 10 year period examined in this rule, using a 3% discount rate, is approximately $16.6 million. Average annual costs during the phase-in period are estimated to be approximately $2.6 million during the first year (different than the phase-in figure in Table 3 below) and an average of $1.8 million for each year after. The estimate assumed slightly higher startup costs during the first year because States and Territories may need to purchase and install an ACD system.

TABLE 3—ESTIMATED IMPACTS OF MONITORING PROVISIONS

[$ in millions]

	Phase-in annual average (years 1–5)	Ongoing annual average (years 6–10)	Annualized cost (over 10 years)			Total present value (over 10 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Money Costs ($ in millions)								
Annual monitoring	155.9	194.9	175.4	172.9	169.4	1,753.8	1,518.7	1,272.8
Preinspection new facilities	0.5	0.9	0.7	0.7	0.7	7.3	6.2	5.1
Hotline	2.0	1.8	1.9	1.9	1.9	18.8	16.6	14.3
Subtotal	158.4	197.6	178.0	175.4	171.9	1,779.9	1,541.5	1,292.2
Opportunity Costs ($ in millions)								
Annual monitoring	12.9	16.2	14.6	14.3	14.1	145.5	126.0	105.6
Preinspection new facilities	0.1	0.2	0.2	0.2	0.2	1.9	1.6	1.3
Subtotal	13.1	16.4	14.7	14.5	14.2	147.4	127.6	106.9
Total	171.5	214.0	192.7	189.9	186.1	1,927.3	1,669.1	1,399.1

Comprehensive background checks. The CCDBG Act of 2014 added a new section at 658H on requirements for comprehensive, criminal background checks that draw on federal and State information sources. The Act outlines five components of a criminal background check, which we restate in § 98.43 of the final rule. There are several aspects of the background check requirements that must be taken into account in a cost estimate. This includes the background checks for existing child care staff members (who do not already have them), the new federal requirement that child care staff members receive a background check every five years, background checks for other adults living in family child care homes, and checks with other States if a child care staff member has lived in another State. This cost estimate does not take into account the cost of the requirement at § 98.43(b)(2) for a search of the National Sex Offender Registry (NSOR) file of the National Crime Information Center (NCIC). ACF is currently in discussions with the FBI to determine the logistics behind States meeting this requirement and plans to issue guidance about how States, Territories, and Tribes can search the NSOR file. We asked for comment on the cost of meeting this requirement and one State estimated a one-time cost of $3 million to meet this requirement. Another State noted that "the amount of security that will be required and the system changes that will be necessary to meet these security requirements has not been specifically identified" but that "automation would be costly, and the labor cost for a non-automated solution would be very high as well." While helpful, we did not feel that we received sufficient information to extrapolate across a nationwide analysis, so are retaining the caveat that this cost estimate does not include a search of the NSOR file of the NCIC.

Similar to the methodology used for monitoring, the first step of the cost estimate was to determine current State practice. This is important because there would not be a new cost for States with requirements in place. One State provided a related comment, stating that since they already require FBI fingerprint checks of employees in child care centers, they do "not anticipate that the additional types of background checks will result in a significant increase in the number of persons being flagged as risky." This State's current requirements also include checks for family child care homes, but since this was a recently implemented requirement, they acknowledge that "child care homes will feel the financial impact of running background checks on additional applicants more significantly than a center-based operation."

To account for existing State practice such as the one mentioned above and the resulting variation in cost, we used CCDF 2014–15 State Plan data (which included State-by-State data on four distinct background check components organized by provider type) to determine which States already met certain components of the background check requirement. After identifying the areas where States would need to implement new requirements we applied the provider counts to determine the number of child care staff members that would need to meet these new background check requirements.

Because our administrative data on the number of CCDF providers represent the number of child care programs serving CCDF children, not the individual child care staff members in these settings that would need to receive a background check, we estimate the number of individual child care staff members that would be affected by this provision by applying a multiplier to each provider type (centers, family home, and group home).

We are requiring individuals, age 18 or older, residing in a family child care home be subject to background checks because it is reasonable to assume that these individuals may have unsupervised access to children. Because we are including these individuals in the definition of child care staff members, they will be subject to the same requirements and will be

allowed the same appeals process as employees.

To generate an estimated number of staff per child care center, we used data from the *National Survey of Early Care and Education (NSECE),* which indicated that the median number of children per center nationally is approximately 50. We then used the following data sources: (1) ACF–801 CCDF administrative data, which provides a detailed breakdown of the number of CCDF children by age group; and (2) *Caring for our Children,* which has a recommended staff-child ratio for centers by age group. (*Caring for Our Children's* recommended staff-child ratios are an overestimate because not all States have adopted the standard.) Using these figures, a weighted average was generated that takes into account the national age-distribution of CCDF children served and recommended child-staff ratios for an average center and a baseline multiplier of 11 staff members per child care center receiving CCDF-funded subsidies, 8 of whom are caregivers and 3 are additional staff members or individuals who may have unsupervised contact with children.

We estimated the number of other adult household members residing in family child care homes (persons other than the caregiver) and relevant staff members and added this to our cost estimate. We assumed each family child care and group home provider had an average of 1 additional household member. (This assumption is informed by consultation with State administrators, who stated that most frequently there is 1 other adult over the age of 18 in a family child care home that must undergo a background check).

Using these multipliers, we estimated the cost for background checks for staff members newly subject to the requirements. This includes both the cost of obtaining the background check and the opportunity cost for child care staff members to meet the required components. The opportunity cost represents the value of time (measured as foregone earnings) of child care staff members during the time, they spend to complete a background check.

Many States already require some, if not most, of the background check components. To determine the existing need, we compared the requirements described in this final rule against current background check requirements, as reported in the CCDF 2014–2015 Plans. According to the Plan information, nearly 30 States require that licensed child care center staff undergo a State criminal background check that includes a fingerprint. More States already have requirements for a State criminal background check without a fingerprint, but for this estimate, we only counted States that required a fingerprint as meeting the requirement. For licensed centers, more than 40 already require an FBI fingerprint check, nearly all already require a check with a child abuse and neglect registry, and more than 35 require a check with a sex offender registry. Nearly 30 States require licensed family child providers to have a State criminal background check that includes a fingerprint, more than 40 already require an FBI fingerprint check, more than 30 require a check with the child abuse and neglect registry, and more than 35 require a check against a sex offender registry.

Fewer States meet the background check requirements for unlicensed CCDF providers. According to our State Plan data, only fewer than 25 States already have FBI fingerprint check requirements in place for its unlicensed providers and only six require those providers to have a State background check that includes a fingerprint.

Using this data, we identified gaps in existing State policies as compared to the newly-required background check components. These gaps were matched with CCDF ACF–800 administrative data showing the number of providers per setting type by State, and then using the methodology above calculated the number of child care staff members requiring background checks.

As mentioned above, there are two costs of a background check: The fee to conduct the check and the time it takes for individuals to get the check. With regard to the fee, Lead Agencies have flexibility to determine who pays for background checks. According to the FY 2014–2015 CCDF Plans, approximately 30 States require the child care provider to pay for the background check, approximately 10 States indicated the cost was split, and fewer than 10 States indicated they pay the fees associated with the cost of conducting a background check. However, regardless of how costs are assigned, an impact analysis must include the overall monetary and opportunity cost impacts.

While we do anticipate that there will be costs associated with enhancing or building systems to process background checks and appeals, we believe that this cost is accounted for here in two areas: (1) The cost estimate is based on a fee for conducting the background check, which is applied to each individual. This fee includes costs associated with processing the background check; and (2) We applied a 5% administrative cost and a 5% information technology (IT) startup cost to all of these new requirements (discussed below). Between these two items, we think that this estimate sufficiently accounts for potential costs of running the background check system.

In their CCDF Plans, Lead Agencies described their costs associated with conducting background checks, including cost information on individual components of the background check. This information, combined with information we received from the FBI regarding costs of FBI fingerprint checks, was used to derive an estimated average cost of each background check component for a total of $55 for each set of four background checks. We applied this cost (or a partial cost) to the number of individuals in need of some or all of the background check components, determined after identifying State-by-State practices for different types of providers

Next, we estimated the average annual ongoing cost of administering background checks to new child care staff members (as opposed to start-up costs associated with bringing existing staff members into compliance). Child care provider departure rates cited in the literature vary widely from as low as 10 percent to 20 percent (*The Early Childhood Care and Education Workforce: Challenges and Opportunities,* Institute of Medicine and the National Research Council, 2012). We used these as the lower and upper bounds, respectively for our estimated turnover rate. We then reduced this estimate by another 10 percent to account for the fact that the Act requires some portability of background checks for certain staff members in a State, meaning that if a staff member has already passed a background check within the past five years, then that individual is not required to get another background check when changing employment from one child care provider to another.

Based on this approach, the estimated present value cost of meeting these background check requirements (for existing and new providers) over the 10 year period examined in this rule, using a 3% discount rate, is approximately $58.6 million. ACF estimated that during the three year phase-in period background check fees would have an average annual money cost of $10.8 million (also estimated using a 3% discount rate), as States bring existing providers into compliance. (Note again that this phase-in period is different than the five year period indicated in the table below). We estimate the average annual ongoing money costs associated with background checks for new staff members of approximately $4

million (estimated using a 3% discount rate).

The Act requires that all child care staff members receive a background check every five years. Through the 2014–15 CCDF State Plans, States report on how frequently licensed providers are required to receive each component of the background check. This data was available both by individual background check component and by provider type. If a State already required that a particular background check be renewed every five years (or more frequently), we did not include it in this cost estimate. While we know that States have similar policies in place for unlicensed providers, we do not have data for this subset of the provider population. Therefore, we considered the renewal of background checks for unlicensed providers to be a fully new cost to all States, understanding that this is more likely than not an overestimate.

Since not all background checks will be conducted in the same year, we spread these costs evenly over a five year period to show that the costs would not be incurred all at once. We recognize that in practice these costs may not be evenly distributed over the five year period, depending on how States choose to conduct background checks during the initial implementation period. However, any uneven distribution of costs over time only negligibly affects the total dollar amount. The estimated present value cost of renewing background checks for all individuals over the 10 year period examined in this rule, using a 3% discount rate, is approximately $55.4 million, with the average annual ongoing money costs of this five year renewal requirement (once it begins in year six of the ten year window) to be $6.3 million. However, since provider counts have been in steady decline (as discussed earlier), this may be an overestimate.

Another feature of the background check requirement is that States are required to check the State-based criminal, sex offender, and child abuse and neglect registries for any States where an individual resided during the preceding five years. One State specifically noted that they did "anticipate that there will be additional costs associated with background checks for out-of-State providers, particularly when obtaining out-of-State information," and that in their case, "that cost would be passed down to the provider, therefore some providers may opt out of participating in the subsidized child care program." It should be restated, however, that while this analysis estimates the cost of each requirement, it does not take into account who will ultimately assume the cost.

To estimate how many individuals would require an additional State background check, we used data from the U.S. Census Bureau, which conducts a Current Population Survey that includes data on Migration and Geographic Mobility (*Current Population Survey Data on Migration/ Geographic Mobility,* U.S. Census Bureau). Mobility data on *employed* individuals (inclusive of all races and genders) ages 25 to 64 show an out of State mobility rate of approximately two percent. Given that this data measures mobility in a given year and our requirement is for a five year window, we use a 10% mobility rate for this calculation. We assume that 10% of all child care staff members will require a check with another State and assign a prorated cost of the background checks minus the FBI check accordingly. We estimate the average annual ongoing money costs of this requirement to check other States to be less than a million dollars. Next, to estimate opportunity cost, we monetized child care staff member time spent obtaining a comprehensive background check, such as completing paperwork or other activities necessary to complete the check. We assumed that a check of the child abuse neglect registry takes 30 minutes, and that the other three components of a comprehensive background check take 1 hour combined (or 20 minutes each) for a total of 1.5 hours. We also assumed that each hour is worth $12.80, assuming $10 per hour for a child care staff member multiplied by 1.28 to account for benefits. (We derived these hours and benefit rates from the *Employer Cost for Employee Compensation database,* Bureau of Labor Statistics, which we then adjusted to reflect the number of child care providers that are self-employed) ACF estimated average annual opportunity costs (using a 3% discount rate) for all the background check components of $6.3 million during the 3 year phase in period and an annualized cost of $ 7.1 million over the 10 year window. This is a total present value of approximately $62.4 million over ten years (using a 3% discount rate).

More extensive background checks will lead to greater numbers of job applicants and other associated people being flagged as risky, thus leading to additional types of cost. For example, a hiring search would need to be extended if the otherwise top candidate is revealed by a background check to be unsuitable to work with children. These costs that result from background checks are correlated with benefits; indeed, if this category of costs is zero, then the background check provisions of this final rule would have no benefits. However, due to lack of data, we have not attempted to quantify either this type of costs or the associated benefits.

TABLE 4—ESTIMATED IMPACTS OF BACKGROUND CHECK PROVISIONS

[$ in millions]

	Phase-in annual average (years 1–5)	Ongoing annual average (years 6–10)	Annualized cost (over 10 years)			Total present value (over 10 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Money Costs ($ in millions)								
Background Checks	8.4	4.5	6.5	6.7	6.9	64.6	58.6	52.2
Background Check Renewals	0.0	13.6	6.8	6.3	5.7	68.1	55.4	42.6
Background Checks with Other States	0.5	0.8	0.7	0.6	0.6	6.5	5.7	4.8
Subtotal	9.0	18.9	13.9	13.6	13.3	139.2	119.7	99.6
Opportunity Costs ($ in millions)								
Background Checks	5.8	3.1	4.4	4.6	4.8	44.4	40.3	35.9
Background Check Renewals	0.0	4.4	2.2	2.0	1.8	22.1	18.0	13.8
Background Checks with Other States	0.5	0.4	0.5	0.5	0.5	4.7	4.1	3.6

TABLE 4—ESTIMATED IMPACTS OF BACKGROUND CHECK PROVISIONS—Continued
[$ in millions]

	Phase-in annual average (years 1–5)	Ongoing annual average (years 6–10)	Annualized cost (over 10 years)			Total present value (over 10 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Subtotal	6.3	7.9	7.1	7.1	7.1	71.1	62.4	53.3
Total	15.3	26.8	21.0	20.7	20.4	210.3	182.1	152.9

Caregiver, teacher and director training. The Act and this final rule require Lead Agencies to establish training requirements for caregivers, teachers, and directors of CCDF providers. The Act (section 658E(c)(2)(I)) and the final rule (§ 98.41(a)(1)) require pre-service or orientation training and on-going training in health and safety topics, including first aid and CPR, safe sleep practices, and other specified areas. In addition, the Act (section 658E(c)(2)(G)) and final rule (§ 98.44) require training and professional development, including training on child development.

For this analysis, we estimated costs in the following areas: Current number of CCDF caregivers, teachers, and directors (using FY 2014 data) to meet new pre-service or orientation training requirements; on-going training for caregivers, teachers, and directors (which includes new incoming caregivers); and pre-service or orientation training for new caregivers, teachers, and directors.

To establish a baseline, ACF used information reported by States in their FY 2014–2015 CCDF Plans and information from the *2011–13 Child Care Licensing Study* to determine—for each of the training areas—which trainings were already required by State policy for the following providers: Centers, family homes, and group homes. The available data allowed us to distinguish between requirements for licensed providers and unlicensed providers, allowing us to further refine the cost estimate. Once current requirements for each State were identified, we were able to determine which new trainings would be required, and then apply the cost of receiving the balance of trainings.

We reviewed the health and safety training delivery models in multiple States with a range of available training requirements to get a better sense of the range of costs for training. We found a wide range, from training provided at no-cost, to training packages that cost up to $170. Using these figures as a basis, a lower bound of $60 and an upper bound of $140 was established for the total training package per caregiver. This range is informed by the fact that many no-cost online training courses have already been developed, and thus are truly no cost, but even States taking advantage of no-cost online trainings would most likely have to use additional trainings with costs associated in order to meet all the requirements.

Training costs were broken into three components: First-aid & CPR training, child development training, and then a package of all other basic health and safety requirements. For the purposes of this estimate, we created these groupings to better reflect the available cost information that we gathered through our research. First-aid and CPR are the most commonly offered trainings, so their costs were easier to identify. One State did point to these particular trainings as an area of concern due to the ongoing costs that they think "would be paid by providers." We discuss our rationale for these trainings (which are required by statute) in the preamble above, but do recognize that there is a cost to this requirement and this cost estimate reflects such costs.

We separated child development training from the rest of the package to reflect the fact that the delivery of trainings in this area are more likely to be tied to broader on-going professional development curricula or programs, and may have a higher cost. Breaking the trainings down in this way allowed us to apply a prorated amount, based on what was currently required by States.

This training requirement only applies to child care providers receiving CCDF subsidies. However, as with the background check estimate, another factor in the calculation was the number of caregivers, teachers and directors per provider that would need to receive the training, since the ACF–800 data captures the number of child care providers serving CCDF children not individual caregivers, teachers, or directors in these settings that would need to receive training. To compensate we applied a multiplier to each setting type (centers, family home, and group home). We used the same methodology described in the background check section above (based on data from the NSECE, ACF–801, and *Caring for our Children* child-staff ratios), to create a weighted average of nine caregivers/teachers/directors per child care center. Unlike the background check requirement, the training would only apply to those providing care for children. For family child care homes, we estimate that one caregiver per site would be required to receive training, and two caregivers per group home.

Next, we assumed that some caregivers, teachers, and directors may already have training in some of the topics, though they were not previously required, and reduced the total estimate by 10 percent. After applying these assumptions, to gaps in current State practice, we were able to estimate the present value cost of compliance with the new pre-service and orientation training requirement. A basic explanation of the calculation is the number of trainings required for compliance (by State and by provider type) multiplied by number of individuals trained multiplied by the cost per training (up to $140 per individual). We also assumed that some portion of individuals will have already received trainings that could apply to the new requirements, so we reduced the final estimate by ten percent. Using a 3% discount rate, the estimated cost is an annualized value of $7 million, or a total of approximately $61 million over the 10 year period examined in this rule. We estimated that during the phase-in period, the required pre-service or orientation health and safety training has an average annual money cost of $18.8 million for the initial two year phase-in period and $3.0 million in subsequent years. The higher cost in the initial years is due to the high cost of bringing current providers into compliance during the phase-in period while in subsequent years, the pre-service and orientation trainings would only apply to new providers.

To estimate the ongoing cost of providing health and safety training in

the required topic areas pursuant to the Act to newly entering caregivers, teachers, and directors of CCDF providers who would not otherwise have been required to receive training, we had to predict turnover within the provider population. We took the midpoint of the turnover number we used for background checks—15 percent. Since, according to the NSECE, many caregivers new to a care setting are not new to the profession, we further reduced that estimate by 20 percent to account for the fact that some new caregivers, teachers, and directors will be coming from other CCDF care settings, and thus bring their training credentials with them. (*Number and Characteristics of Early Care and Education (ECE) Teachers and Caregivers: Initial Findings from the National Survey of Early Care and Education (NSECE)*, OPRE Report #2013–38)

To generate a cost of ongoing training, based on anecdotal evidence from State administrators, we assumed that ongoing trainings (*e.g.*, maintaining competencies and certificates) would be the equivalent of approximately 20% of the total cost of pre-service and orientation training to the entire CCDF provider population and used that as our annual estimate. We estimated that on an ongoing basis, average annualized money costs for training would be $6.2 million (estimated using a 3% discount rate). The estimated present value cost of this requirement over the 10 year period examined in this rule is approximately $54 million (again using a 3% discount rate).

Next we monetized caregiver/teacher/director time spent completing the requisite health and safety trainings (opportunity costs). *The National Center on Child Care Professional Development Systems and Workforce Initiatives* funded by ACF reported that the training topics together would require a minimum of 20 hours. However, most caregivers will require only a subset of the training topics (*e.g.*, SIDS training is only for caregivers that serve infants; transportation and child passenger safety is only as applicable). Using that as a baseline, for the purposes of this calculation we used a lower bound estimate of 15 hours and an upper bound of 30 hours to complete the required trainings. We used the midpoint of these two estimates for the final estimate. We assumed that each hour of staff time equals $12.80, the same as we did for background checks ($10 for child care caregivers multiplied by 1.28 to account for benefits, but not overhead). (*Employer Cost for Employee Compensation database*, Bureau of Labor Statistics, adjusted to reflect the number of child care providers that are self-employed)

We then applied a 10 percent reduction to those figures to account for caregivers who have fulfilled some training requirements that were not previously required. Using these assumptions, during the initial two year phase-in period (different than the 5 year phase-in period indicated in the table below) the average annual opportunity cost of monetized caregiver time on trainings is estimated to be approximately $63.2 million. The average annual opportunity cost for the entire 10 year period is estimated to be 37.6 million, with a total present value of $330.0 million over the 10 year period (using a 3% discount rate).

TABLE 5—ESTIMATED IMPACTS OF TRAINING PROVISIONS

[$ in millions]

	Phase-in annual average (years 1–5)	Ongoing annual average (years 6–10)	Annualized cost (over 10 years)			Total present value (over 10 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Money Costs ($ in millions)								
Pre-Service & Orientation	9.8	3.5	6.6	7.0	7.5	66.4	61.4	56.0
On-going (existing providers)	5.6	7.0	6.3	6.2	6.1	62.9	54.4	45.5
Subtotal	15.4	10.5	12.9	13.2	13.5	129.3	115.8	101.5
Opportunity Costs ($ in millions)								
Pre-Service & Orientation	27.9	10.0	18.9	19.9	21.2	189.2	174.9	159.5
On-going (existing providers)	15.9	19.9	17.9	17.6	17.3	179.2	155.0	129.7
Subtotal	43.8	29.9	36.8	37.6	38.5	368.4	330.0	289.3
Total	59.2	40.4	49.7	50.8	52.0	497.7	445.8	390.8

Administrative and information technology (IT) startup. Compliance with these health and safety provisions will require States to incur administrative costs and develop or expand their information technology systems and capacity. One State noted in their comment that the new requirements "will require significant modifications to our licensing system. This significant burden on our IT resources will require more staff resources than we have available and will also require State monetary resources that are not currently available."

Given that there will be significant variation at the State level on these costs, rather than attempt to quantify the related costs for each provision, we applied a percentage of the total health and safety money costs (minus the costs for the hotline for parental complaints, which already includes administrative and IT costs in its calculation) to estimate the costs of both administrative and IT/infrastructure costs. This analysis assumes 5 percent for administrative costs and an additional 5 percent for IT/Infrastructure costs. Since the annualized amount of all total health and safety money costs (minus the hotline for parental complaint) is approximately $202.2 million, five percent of that would be approximately $10.0 million per year (using a 3% discount rate).

Our 5 percent estimate for Administrative costs is based on Sec. 658E(c)(3)(C) of the Act, which places a 5 percent limit on administrative costs, by stating that not more than 5 percent of the aggregate amount of funds available to the State to carry out this subchapter by a State in each fiscal year may be expended for administrative costs incurred by such State to carry out all of its functions and duties under this

subchapter. According to the most recently available data collected through the ACF–696 financial reports, of the 56 States and Territories, only 4 were using the full 5 percent allowed for administrative costs.

The 5 percent estimate for IT/Infrastructure costs is based on OCC's expenditure data (ACF–696), which shows that Lead Agencies reported using a total of $68 million or approximately 1 percent of expenditures on computer information systems. Given the expected increase in IT costs associated with implementing the new rule, including possible costs associated with consultation, we increased that to 5 percent, which we considered a reasonable estimate given current expenditure levels.

The estimated present value cost of both administrative costs and IT/Infrastructure costs amounts to an annualized cost of approximately $10.0 million each, which would result in a cost of $88.2 million over the 10 year period examined in this rule, using a 3% discount rate.

TABLE 6—ESTIMATED IMPACTS OF HEALTH AND SAFETY PROVISIONS

[$ in millions]

	Phase-in annual average (years 1–5)	Ongoing annual average (years 6–10)	Annualized cost (over 10 years)			Total present value (over 10 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Money Costs ($ in millions)								
Monitoring	158.4	197.6	178.0	175.4	171.9	1,779.9	1,541.5	1,292.2
Background Checks	9.0	18.9	13.9	13.6	13.3	139.2	119.7	99.6
Training	15.4	10.5	12.9	13.2	13.5	129.3	115.8	101.5
Admin	9.1	11.3	10.2	10.0	9.9	101.7	88.2	74.2
IT & Infrastructure	9.1	11.3	10.2	10.0	9.9	101.7	88.2	74.2
Subtotal	201.0	249.6	225.2	222.2	218.5	2,251.8	1,953.4	1,641.7
Opportunity Cost ($ in millions)								
Monitoring	13.1	16.4	14.7	14.5	14.2	147.4	127.6	106.9
Background Checks	6.3	7.9	7.1	7.1	7.1	71.1	62.4	53.3
Training	43.8	29.9	36.8	37.6	38.5	368.4	330.0	289.3
Subtotal	63.2	54.2	58.6	59.2	59.8	586.9	520.0	449.5
Total	264.2	303.8	283.8	281.4	278.3	2,838.7	2,473.4	2,091.2

2. Consumer Education Provisions

The Act and the final rule includes several provisions related to improving transparency for parents and helping them to make better informed child care choices. Some of these provisions may require new investments by the States, Territories, and Tribes, including a consumer education Web site at § 98.33(a) and a consumer statement at § 98.33(d). Greater discussion of each of the provisions can be found at Subpart D. All costs associated with implementation of consumer education requirements are considered money costs (as opposed to opportunity costs) since they would involve an actual money transaction.

Consumer education Web site. The final rule, per the Act, amends paragraph (a) of § 98.33 to require Lead Agencies to create a consumer-friendly and easily accessible Web site as part of their consumer education activities. The Web site must at a minimum include six main components: (1) Lead Agency policies and procedures, (2) provider-specific information for all licensed child care providers, and at the discretion of the Lead Agency, all eligible child care providers (other than an individual who is related to all children for whom child care services are provided), (3) results of monitoring and inspection reports for all eligible child care providers (other than an individual who is related to all children for whom services are provided), (4) aggregate number of deaths, serious injuries, and instances of substantiated child abuse in child care settings each year for eligible providers, (5) referral to local child care resource and referral organizations, and (6) directions on how parents can contact the Lead Agency, or its designee, and other programs to help the parent understand information included on the Web site. We established our estimate based on current State practice and the market price of building a Web site that fulfills the requirements in this final rule.

ACF conducted a comprehensive review of State Web sites and found 35 States and Territories already have Web sites that meet at least some of the new requirements. Based on an analysis of current State consumer education Web sites, we assumed that any of the States that did not meet any of the new requirements would have all new costs. For States that met some of the requirements, we determined the percentage of work needed for the Web site to meet the requirements and multiplied the percentage of work needed by the cost estimate for building and implementing a consumer education Web site. Components of a Web site that we looked for and included in our estimate were: The scope of the Web site in terms of which providers were included; health and safety requirements; posting the date of last inspection, including any history of violations or compliance actions taken against a provider; information on the quality of the provider; and aggregate data on number of fatalities, serious injuries, and substantiated cases of child abuse that occurred in child care. From this review, we determined the amount of work needed for all States and Territories to build and implement the requirements of the consumer education Web site. We also consulted several organizations familiar with building Web sites to establish an upper and lower bounds for the estimate based on the final rule that covered the full range of implementation, from planning and initial set-up to beta testing. The upper and lower bound estimates include features that would make the Web site more user-friendly but may not be included in the final rule, including

advanced search functions, such as a map feature, to make it easier for parents to find care.

Building and implementing a new Web site requires some start-up costs, so the cumulative estimated costs are higher during the initial five-year phase-in period. We established a lower bound estimate to include the web developer costs of planning, creating supporting documentation, site and infrastructure set-up, static page creation, initial data imports, the creation of basic and advanced search functions and data management systems, and testing. The upper bound adds development and improvement activities to modernize the Web site as technologies change. Ongoing annual costs include quality control and maintenance, providing customer support, and monthly data updates to the Web site. All of these estimates include salaries and overhead for the Web site developers and staff, weighted by the number of CCDF providers in each State.

Based on our research, we used the same salary and overhead information ($67,000 for line staff) for all States. However, there will be different levels of effort depending on the number of providers in a State, so we assumed different FTEs based on the total number of child care providers in a State: States with more than 8,000 providers (3.0 FTE), States with between 3,000 and 8,000 providers (2.50 FTE), and States with less than 3,000 providers (2.0 FTE). 11 States had over 8,000 providers; 16 States and Territories had between 3,000 and 8,000 providers; and 29 States and Territories had fewer than 3,000 providers.

Over the five-year phase-in period, we estimated an average annual money cost (estimated using a 3% discount rate) for just the building and maintenance of Web sites of $12.8 million and ongoing money costs of $11.8 million annually thereafter.

The consumer education Web site requires a list of available providers and provider-specific monitoring reports, including any corrective actions taken. The costs associated with collecting the information necessary to provide this information on the Web site is included in other parts of this RIA. For example, this RIA includes an estimate for the cost of implementing monitoring and inspection requirements. There may also be effort associated with translating information from monitoring and inspection reports for an online format. However, since the monitoring cost assumes the full salary for monitoring staff and supervisors, it is reasonable to assume that the duties of these employees would include processing licensing information/findings.

However, one of the components of the consumer education Web site at § 98.33(a)(2)(ii) is information about the quality of the provider as determined by the State through a QRIS or other transparent system of quality indicators, if the information is available for the provider. For Lead Agencies that do not currently have a means for differentiating quality of care, there may be new money costs associated with creating the system of quality indicators necessary to obtain quality information on providers. Therefore, we are incorporating the cost of implementing a system of quality indicators into the cost estimate for the consumer education Web site.

In order to estimate the costs of implementing the transparent system of quality indicators for the consumer education Web site, we modeled a sample system of quality indicators using the QRIS Cost Estimation Model (developed by the National Center on Child Care Quality Improvement funded by ACF). Costs were associated with the following components included in the cost estimation model: Quality assessment, monitoring and administration, and data and other systems administration. For each State, we identified the components of the sample system of quality indicators that each individual State or territory was missing. Costs were applied only in the areas that were lacking for States and territories with partial compliance.

States and Territories not meeting any of the components of the model had all new costs associated with each component. Using information from the CCDF FY 2014–2015 State Plans and the National Center on Child Care Quality Improvement, ACF determined which States had a system for differentiating the quality of care available in the State, which States could then use to provide information on the consumer education Web site. In order for States to be considered as already meeting this requirement, the State needed to have reported having a means for measuring and differentiating quality between child care providers. ACF recommends this system be a QRIS that meets high-quality benchmarks, but as this rule does not require a QRIS, we counted other systems of quality indicators, such as tiered reimbursement based on quality, as meeting the components of the consumer Web site. More than 45 States have sufficient means for differentiating quality and therefore we assumed no cost for those States.

ACF estimates that during the five-year phase-in period the total national cost associated with implementing transparent systems of quality indicators has an average annual cost of $2.2 million. This estimate has been included in the cost of designing and implementing the consumer education Web site, which was discussed above. The total estimated present value cost (using a 3% discount rate) of the Web site requirement over the 10 year period examined in this rule is $108.6 million, with an annualized cost of $12.4 million.

Consumer statement. The final rule at § 98.33(d) requires Lead Agencies to provide parents receiving CCDF subsidies with a consumer statement that includes information specific to the child care provider they select. The consumer statement must include health and safety, licensing or regulatory requirements met by the provider, the date the provider was last inspected, any history of violations, and any voluntary quality standards met by the provider. It also must disclose the number for the hotline for parents to submit complaints about child care providers, as well as contact information for local resource and referral agencies or other community-based supports that can assist parents in finding and enrolling in quality child care.

The information included in the consumer statement overlaps with much of the information required on the consumer education Web site. In their FY 2014–2015 CCDF Plans, 42 States and Territories report using their Web sites to convey consumer education information to parents about how their child care certificate permits them to choose from a variety of child care categories. Since many States and Territories are already using their Web sites to make available provider-specific information, this final rule does not require Lead Agencies to create a whole new document or information item. Rather, the Lead Agency can point parents to the provider's profile on the Web site or print it out for a parent that may be doing intake in person. We assumed the consumer education Web site already includes the majority of information required in the consumer statement, including, if available, information about provider quality. However, commenters noted that there may be additional staff time needed to provide additional information to parents receiving subsidies. Therefore, this cost estimate takes into account labor costs associates with the consumer statement. This estimate also takes into account the number of providers in each State or Territory. During the five-year phase-in period, we estimated an

average annual cost of the consumer statement provisions to be approximately $1 million and an average ongoing cost of $775,000 annually.

TABLE 7—ESTIMATED IMPACTS OF CONSUMER EDUCATION PROVISIONS

[$ in millions]

	Phase-in annual average (years 1–5)	Ongoing annual average (years 6–10)	Annualized cost (over 10 years)			Total present value (over 10 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Money Costs ($ in millions)								
Consumer education Web site	12.8	11.8	12.3	12.4	12.5	123.0	108.6	93.6
Consumer statement	0.5	0.8	0.7	0.6	0.6	6.5	5.5	4.5
Total	13.3	12.6	13.0	13.0	13.1	129.5	114.1	98.1

3. Increased Average Subsidy per Child

The reauthorized statute and this final rule include several policies aimed at increasing access to quality care for low-income children, as well as creating a fairer system for child care providers. As Lead Agencies implement these new policies, we expect that there will be an increase in the amount paid to child care providers, representing a budget impact on Lead Agencies. While we expect these changes to cause an increase in payments, we lack specific data on the amounts associated with each of these policies. We requested comments about whether Lead Agencies expect these policies to cause an increase in the subsidy payment rates, but did not receive any comments with specific information to further inform the cost estimate.

We expect the following policies and practices to impose budget impacts (which are characterized in this analysis as transfers) on Lead Agencies:

- Setting payment rates based on the most recent market rate survey (or alternative methodology) and at least at a level to cover health, safety, quality, and staffing requirements in the rule (though some of the impact related to health and safety may already be accounted for in the health and safety sections of the RIA). Lead Agencies must also take into consideration the cost of providing higher-quality child care services (§ 98.45(f));
- Delinking provider payments from a child's occasional absences by either paying based on a child's enrollment, providing full payment if a child attends at least 85 percent of authorized time, or providing full payment if a child is absent for five or fewer days in a month (§ 98.45(l)(2)); and,
- Adopting the generally-accepted payment practices of child care providers who do not receive CCDF subsidies, including paying on a part-time or full-time basis (rather than paying for hours of service or smaller increments of time) and paying for reasonable mandatory registration fees that the provider charges to private-paying parents (§ 98.45(l)(3)).

Lead Agencies are required to implement each of these policies; however, several of them have a few options from which Lead Agencies may choose. We do not know which options Lead Agencies will choose, and therefore are not certain of which policies will impose budget impacts on which Lead Agencies. These impacts will also vary by Lead Agency depending on how many of the policies the Lead Agency adopted prior to this final rule. We requested comment on how Lead Agencies may choose to implement these different payment policies and practices and included this in the preamble discussion of § 98.45 above.

Because of the multiple policy options available to Lead Agencies and limited data on the effects of individual policies, it is difficult to estimate new impacts associated with each policy listed. However, we recognize that implementing these new policies will impact Lead Agency budgets and contribute to an increase in the amount of cost per child of child care assistance per child. Therefore, despite our uncertainty regarding specific effects, we would be overlooking a potentially significant new impact if we did not include an analysis of payment policies and practices in this RIA.

These payment policies and practices will each have varying effects, but once they are put together, one likely outcome is an increase in the average annual subsidy amount per child. Therefore, in order to estimate the possible payment effects associated with these policies, we are bundling them together and estimating their total impact on the average annual subsidy per child. The actual impact will depend on how many of the policies the Lead Agency currently has in place and how the Lead Agency chooses to implement these new policies.

The average annual subsidy rate per child in FY 2014 was $4,824. This amount is the starting point for our estimate. The average annual subsidy rate per child has historically increased each year and would continue to do so regardless of the new law or regulation. Therefore, we have built in a 2.59% increase for each of the ten years included in this cost estimate. This increase represents the historical increases in the average annual subsidy per child that we estimate would occur without this rule.

This subsidy amount, including the increase that would be expected to happen regardless of reauthorization and this final rule, provides the baseline for our ten year estimate. This average represents all settings, all types of care, all ages, and all localities, which masks great variation across the States/Territories based on different costs of living or the higher costs associated with providing care to infants and toddlers. For example, the highest average annual subsidy per child paid by a State/Territory was $9,4088 in FY 2014, while the lowest average annual subsidy per child paid by a State/Territory was $1,944. States/Territories with subsidy payments substantially lower than the average subsidy payment are likely to see higher increases in the subsidy rate than States/Territories with subsidy payments closer to the average.

To calculate the impacts, we estimated a phased-in increase in the average annual subsidy per child above the baseline, which includes the expected increase in the average annual subsidy per child regardless of this final rule. We expect that there will be a phase-in of the subsidy increase as Lead Agencies phase-in the new policies in reauthorization and this final rule. The

phase-in is expected from FY 2016 to FY 2018, with the increase in the subsidy being $165 in FY 2016, $265 in FY 2017, and $515 in FY 2018, respectively, each comparable to the current baseline. This represents the increase on top of the regular annual average subsidy per child, and not the estimated subsidy itself. Following the new market rate survey or alternative methodology that may lead to setting higher payment rates, we estimate the subsidy would increase by $765 in FY 2019, and stay steady in FY 2020 and FY 2021. With the new market rate survey or alternative methodology in FY 2022, we expect an additional increase in the subsidy of $250 (or a total increase of $1,015 above the baseline), and estimate the subsidy will stay steady in FY 2023 and FY 2024.

These estimated increases to average annual subsidy are based on our assumptions about how quickly Lead Agencies may implement the policies, and the reality that the average annual subsidy will likely grow incrementally. Because of limited data, we chose to estimate a modest increase to the average annual subsidy per child. However, given the uncertainty regarding exactly how much the average annual subsidy per child may increase each year, we requested comments and estimates regarding these new costs and how they may impact the subsidy rate in each State/Territory. However, we did not receive comment in this area, so absent additional information we are keeping these cost assumptions for the final rule.

The estimated increases included in this RIA are not recommendations for what ACF proposes to be appropriate levels to set rates in States/Territories and should not be considered as the amount needed to provide an acceptable level of health and safety, or to provide high-quality care. As mentioned earlier in this rule, ACF is very concerned about States'/Territories' current low payment rates. ACF continues to stand behind the 75th percentile of current market rates, which remains an important benchmark for gauging equal access for children receiving CCDF-funded child care.

The per child calculations used here are not recommendations for a per child subsidy, but rather represent an estimated cost of increasing the current national average annual subsidy per child as a result of these new policies. This is likely an underestimate of the payment amounts necessary to raise provider payment rates to a level that supports access to high-quality child care for low-income children. We requested comments on what provider payment rates may be necessary to support high-quality child care. While one State did comment to note that they anticipate that "it may be necessary for providers to increase their rates in order to comply with additional health and safety training requirements," we did not receive comments with specific information on projected costs related to this analysis.

To calculate the estimated total increase in the average annual subsidy per child and the impacts associated with the new payment policies in this final rule, we multiplied the estimated increase in the average annual subsidy per child (described above) by the FY 2014 CCDF caseload of 1.4 million children. Based on this formula, we estimate the average annual impact to be $478.8 million during the initial five year period, with the estimated present value over the subsequent 5 year period of $839.1 million (estimated using a 3% discount rate). This would be a total present value of approximately $7.4 billion over 10 years (using a 3% discount rate).

As discussed above, there is a high level of uncertainty associated with this estimate. However, not including an estimate of the Lead Agency budget impacts associated with these policies would overlook significant policies in the legislation and this final rule and fail to give an accurate picture of the costs associated with them.

OMB Circular A–4 notes the importance of distinguishing between costs to society as a whole and transfers of value between entities in society. The increases in subsidy payments just described impose budget impacts on Lead Agencies, but from a society-wide perspective, they only generate costs to the extent that they lead to new resources being devoted to quantity or quality of child care. Although we acknowledge this potential increase in resource use, for the technical purposes of this regulatory impact analysis, we will refer to the estimated subsidy payment impacts as transfers from Lead Agencies to entities bearing the existing cost burden (mostly child care providers who typically have low earnings), rather than societal costs.

TABLE 8—ESTIMATED IMPACTS OF INCREASED SUBSIDY

[$ in millions]

	Phase-in annual average (years 1–5)	Ongoing annual average (years 6–10)	Annualized cost (over 10 years)			Total present value (over 10 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Transfers From Lead Agencies to Child Care Providers ($ in millions)								
Increased Subsidy	478.8	1,281.0	879.9	839.1	786.1	8,799.0	7,372.4	5,907.7
Total (Transfers and Costs)	478.8	1,281.0	879.9	839.1	786.1	8,799.0	7,372.4	5,907.7

B. Analysis of Benefits

The changes made by the CCDBG Act of 2014 and the final rule have three primary beneficiaries: Children in care funded by CCDF (currently approximately 1.4 million), their families who need the assistance to work, pursue education or to go to school/training, and the roughly 415,000 child care providers that care for and educate these children. But the effect of these changes will go far beyond those children who directly participate in CCDF and will accrue benefits to children, families, and society at large. Many providers who serve children receiving CCDF subsidies also serve private-paying families, and all children in the care of these providers will be safer because of the new CCDF health and safety requirements. Further, the requirements for background checks extend beyond just CCDF providers. The public at large also benefits in cost savings due to greater family work stability when there is stable, high quality child care; lower rates of child morbidity and injury; fewer special education placements and less need for remedial education;

reduced juvenile delinquency; and higher school completion rates.

In 2012, approximately 60 percent of children age 5 and younger not enrolled in kindergarten were in at least one weekly non-parental care arrangement. (U.S. Department of Education, *Early Childhood Program Participation,* from the National Household Education Surveys Program of 2012, August 2013) We know that many child care arrangements are low quality and lack basic safeguards. A 2006 study conducted by the National Institute of Child Health and Development (NICHD) found that, "most child care settings in the United States provide care that is "fair" (between "poor" and "good") and fewer than 10 percent of arrangements were rated as providing very high quality child care." (U.S. Department of Health and Human Services, National Institutes of Health, *Study of Early Child Care and Youth Development,* 2006) More recently, both the Department of Health and Human Services' (HHS) Office of Inspector General (OIG) and the Government Accountability Office (GAO) have identified serious deficiencies with health and safety protections for children in child care settings. (HHS Office of the Inspector General, *Child Care and Development Fund: Monitoring of Licensed Child Care Providers,* OEI–07–10–00230, November 2013) (*Early Alert Memorandum Report: License-Exempt Child Care Providers in the Child Care and Development Fund Program,* HHS OIG, 2013). (Government Accountability Office, *Overview of Relevant Employment Laws and Cases of Sex Offenders at Child Care Facilities,* GAO–11–757, 2011) We also know from a growing body of research that in addition to the importance of quality to health and safety on a child's immediate and long term future health, quality is important for children's long term success in school and in life (as described elsewhere in this section).

While there are many benefits to children, families, providers and society from affordable, higher-quality child care, there are challenges to quantifying their impact. CCDF provides flexibility to States, Territories, and Tribes in setting health and safety standards, eligibility, payment rates, and quality improvements. As a result, there is much variation in CCDF programs across States. Therefore, we do not have a strong basis for estimating the magnitude of the benefits of the CCDBG Act of 2014 and the final rule in dollar amounts. While we are not quantifying benefits in this analysis, we requested comment on ways to measure the benefit that the Act and the proposed (now final) rule will have on children, families, child care providers, and the public. However, we did not receive comment in this area that would support quantification of these benefits.

As shown in the discussion below, there is evidence that the CCDBG Act of 2014 and final rule's improvements to health and safety, quality of children's experiences, and stability of assistance for parents and providers will have a significant positive return on the public's investment in child care. We discuss these benefits as "packages" of improvements: (1) Health and safety; (2) consumer information and education; (3) family work stability; (4) child outcomes; and (5) provider stability.

1. Health and Safety

One of the most substantial changes made by this final rule is a package of health and safety improvements, including health and safety requirements in specific topic areas, health and safety training, background checks, and monitoring and pre-inspections.

Health and Safety Requirements. The Act requires Lead Agencies to set requirements in baseline areas of health and safety, such as CPR and first aid, and safe sleeping practices for infants. At their core, health and safety standards in this final rule are intended to make child care safer and thus lower the risk of harm to children.

The CCDBG Act of 2014 and the final rule are expected to lead to a reduction in the risk of child morbidity and injuries in child care. The most recent study on fatalities occurring in child care found 1,326 child deaths from 1985 through 2003. The study also showed variation in fatality rates based on strength of licensing requirements and suggested that licensing not only raises standards of quality, but serves as an important mechanism for identifying high-risk facilities that pose the greatest risk to child safety. (Dreby, J., Wrigley, J., Fatalities and the Organization of Child Care in the United States, 1985–2003, American Sociological Review, 2005) ACF collects data about the number of child care injuries and fatalities through the Quality Performance Report (QPR) in the CCDF Plan (ACF–118). In 2014, there were 93 child deaths in child care based on data reported by 50 States and Territories. The number of serious injuries to children in child care in 2014 was 11,047, with 35 States and Territories reporting.

Various media outlets have also conducted investigations of unsafe child care and deaths of children. In Minnesota, the Star Tribune in Minneapolis reported in a series of articles in 2012 that the number of children dying in child care facilities "had risen sharply in the past five years, from incidents that include asphyxia, sudden infant death syndrome (SIDS) and unexplained causes." The report found 51 children died in Minnesota over the five-year period. (Star Tribune, *The Day Care Threat,* 2012) In Indiana, an investigation by the Indianapolis Star found, "21 deaths at Indiana day cares from 2009 to June 2013, and 10 more child deaths have since been reported." (Indianapolis Star, *How Safe are Indiana Day Cares,* 2013) Indiana recently passed legislation that raises standards for child care programs. In Kansas, the high incidence of fatalities prompted the Kansas legislature to implement new procedures to guide investigations of serious injury or sudden, possibly unexplained deaths in child care, particularly infants. (Kansas Blue Ribbon Panel on Infant Mortality, *Road Map for Preventing Infant Mortality in Kansas,* 2011) The case of Lexie Engelman was a rally cry of advocates for better health and safety requirements. The 13-month old child suffered fatal injuries in a registered family child care home in 2004 due to lack of supervision. As a result, Kansas enacted new protections such as requiring all providers to be licensed and regularly inspected, training for providers, and new rules of supervision. Since implementing "Lexie's Law," Kansas jumped from 46th to 3rd in the Child Care Aware of America annual ranking of State policies, and State officials have been able to use data to target regulatory action and provide information to the public in a much more timely way. State officials report that more stringent regulations have greatly enhanced State capacity to protect children.

With respect to morbidity, 20 percent of SIDS deaths occur while children are in child care. (Moon, R.Y., Sprague, B.M., and Patel, K.M., *Stable Prevalence but Changing Risk Factors for Sudden Infant Death Syndrome in Child Care Settings in 2001,* 2005) Many of these deaths are preventable by safe sleep practices. Local review teams in one State found that 83 percent of SIDS deaths could have been prevented. (Arizona Child Fatality Review Program, *Twentieth Annual Report,* November 2013) As part of health and safety training requirements, the Act and final rule require that caregivers, teachers, and directors serving CCDF children receive training in safe sleep practices. According to the FY 2014–2015 CCDF Plans, approximately 27 States and

Territories already have safe sleep and SIDS prevention pre-service training requirements for child care centers, and 26 States and Territories have SIDS prevention pre-service training requirements for family child care homes. Requiring the remaining States and Territories to have safe sleep training for child care providers will likely help change provider practice and lower the risk of SIDS-related deaths for infants.

Health and Safety Training. The final rule codifies the requirement of the Act that CCDF caregivers, teachers, and directors undergo a pre-service or orientation training, as well as receive ongoing training, in the health and safety standards. The final rule also adds child development as a required topic for required training, consistent with the professional development and training provisions of the Act. Knowledge of child development is important to understanding and implementing safety and health practices and conditions. Training in health and safety standards, particularly prevention of SIDS, should reduce child fatalities and injuries in child care. For example, the rate of SIDS in the U.S. has been reduced by more than 50 percent since the campaign in the early 1990s by the American Academy of Pediatrics on safe sleep practices with infants. (National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development. Back to Sleep Public Education Campaign) Only 24 States currently require pre-service or orientation training to include SIDS prevention.

Background Checks. The new background check requirements are expected to prevent individuals with criminal records from working for child care providers. Data from two States show that 5 to 10 percent and 3 to 4 percent, respectively, of background checks result in criminal record "hits" that disqualify the provider. To the extent that these individuals would have otherwise worked in child care settings, thereby increasing the risk of maltreatment or injury to a child, we assume that background checks yield a positive benefit for child health and safety. That is, background checks serve a real purpose in preventing a small proportion of potentially dangerous individuals from providing care to children.

Monitoring. The Act and this final rule require States to conduct monitoring visits for all CCDF providers, including license-exempt providers (except, at the Lead Agency option, those that serve relatives). Licensed CCDF providers must receive a pre-licensure inspection and annual, unannounced inspections. License-exempt CCDF providers (except at the Lead Agency option those that serve relatives) must have annual inspections for health, safety and fire standards. Currently, 15 States do not conduct a licensing pre-inspection visit of family child care; 12 States do not conduct pre-inspections on group homes; and one State does not pre-inspect child care centers. Nineteen States do not inspect family child care providers each year, 22 States do not conduct annual visits for group homes, and 10 States do not visit child care centers on an annual basis. It is reasonable to expect that more stringent health and safety standards and their enforcement through pre-inspections and annual licensing inspections will result in fewer serious injuries and child fatalities in child care.

Child Abuse Reporting and Training. Nationally, there are approximately 12.5 million children in child care settings. With a rate of over 10 children per thousand being victims of substantiated abuse or neglect, there are over 100,000 children estimated to be victims of abuse who are also receiving services in child care settings. This final rule contains a number of provisions designed to prevent child abuse and neglect. Under the Act and this final rule, Lead Agencies must certify that child care caregivers, teachers, and directors comply with child abuse reporting requirements of the Child Abuse Prevention and Treatment Act. The final rule also requires training on "recognition and reporting of suspected child abuse and neglect", which would equip caregivers, teachers, and directors with training necessary to report potential abuse and neglect. The rule also requires training in child development for CCDF caregivers, teachers, and directors. From a protection standpoint, research has shown that improving parental understanding of child development reduces the incidence of child abuse and neglect cases. (Daro, D. and McCurdy, K., *Preventing Child Abuse and Neglect: Programmatic Interventions,* Child Welfare, 1994) (Reppucci, N., Britner, P., and Woodard, J., *Preventing Child Abuse and Neglect Through Parent Education,* Child Welfare, 1997) To the extent that this training would have a similar effect on caregivers, teachers, and directors of CCDF providers, we expect there to be some decrease in child abuse within child care settings.

In addition to the tragedy of injuries and fatalities in child care, there are tangible costs such as medical care, a parent's absence from work to tend to an injured child, the loss for the family, and loss of lifetime potential earnings for society. According to the 2014 Quality Performance Report, there were 11,407 injuries (defined as needing professional medical attention) and 93 fatalities reported in child care. We think these numbers are lower than the actual incidences because some Lead Agencies have difficulty accessing this information collected by other agencies.

2. Consumer Information and Education

As one research study said, "Child care markets would work more effectively if parents had access to more information about program quality and help finding a suitable situation. This would cut the cost of searching for care and increase the likelihood of more comparison shopping by parents." (Helburn, S. and Bergmann, B., *America's Child Care Problem: The Way Out,* 2002) The Act and final rule require the Lead Agency to provide consumer education to parents of eligible children, the general public, and child care providers. This includes a consumer-friendly and easily accessible Web site about relevant Lead Agency processes and provider-specific information. The Act and the final rule also require a range of information for parents, including the availability of child care services and other assistance for which they might be eligible, best practices relating to child development, how to access developmental screening, and policies on social-emotional behavioral health and expulsion. The final rule also requires a consumer statement for families receiving subsidies. Taken together, these provisions should improve parents' ability to make fully informed choices about child care arrangements.

The consumer education package also provides benefits to parents in regards to the value of their time. Most parents want to know about health and safety records, licensing compliance, and quality ratings when deciding on a child care provider. However, this research can be very time consuming because of barriers to accessing the information needed to make a fully informed decision. For example, while all Lead Agencies must make substantiated complaints available to the public, some States previously required that people go to a government office during regular business hours to access these records. It is not reasonable to expect a parent who is working to take that time to navigate these bureaucratic requirements.

The final rule's package of consumer education provisions, including the

consumer-friendly Web site, addresses the aforementioned information barrier by helping to provide parents with important resources in a manner that fits their needs.

3. Family Work Stability/Improved Labor Force Productivity

The Act and the final rule promote continuity of care in the CCDF program through family-friendly policies—it requires Lead Agencies to implement minimum 12-month eligibility redetermination periods, ensures that parents who lose their jobs do not immediately lose their subsidy, minimizes requirements for families to report changes in circumstances, and provides more flexibility to serve vulnerable populations, such as children experiencing homelessness, without regard to income or work requirements.

Benefits to employers. There is a strong relationship between the stability of child care and the stability of the workforce for employers. The cost to businesses of employee absenteeism due to disruptions in child care is estimated to be $3 billion annually. (Shellenback, K., *Child Care & Parent Productivity: Making the Business Case,* Cornell University: Ithaca, NY. 2004) The eligibility provisions of the Act and this final rule will allow parents to work for longer stretches without interruptions to their child care subsidy, and will benefit parents by limiting disruptions to their child care arrangements. These policies in turn also provide benefits to employers seeking to maintain a stable workforce.

Studies show a relationship between child care instability and employers' dependability of a stable workforce. In one study, 54 percent of employers reported that child care services had a positive impact on employee absenteeism, reducing missed workdays by as much as 20 to 30 percent. (Friedman, D.E., *Child Care for Employees' Kids,* Harvard Business Review, 1986) In addition, 63 percent of employees surveyed at American Business Collaboration (ABC) companies in 10 communities across the country reported improved productivity when a parent was using high-quality dependent care, and 40 percent of employees reporting spending less time worrying about their families, 35 percent were better able to concentrate on work, and 30 percent had to leave work less often to deal with family situations. (Abt Associates, *National Report on Work and Family,* 2000) A 2010 study examined the impact of child care subsidy receipt by New York City employees and employees of subcontracted agencies in the health care sector. The study looked at the variables of attendance, work performance, productivity, and retention of employees. Results showed that subsidy receipt had a positive impact on work performance; whereas, the loss of the subsidy had a negative effect. After the subsidy period ended and parents were faced with less stable child care arrangements, participants self-reported a decrease in their work performance and in their work productivity coupled with an increase in tardiness and work/family conflict. (Wagner, K.C., *Working Parents for a Working New York Study,* Cornell and New York Child Care Coalition, 2010)

Benefits to parents. The lack of reliable and dependable child care arrangements negatively affects parents' income, hours worked, work performance, and advancement opportunities. To the extent that these new requirements will reduce barriers to retaining child care assistance for CCDF families, the new rule will mitigate some of the disruption currently experienced by low-income families. Studies have shown that many parents face child care issues that can disrupt work, impacting both the parent and their employers. One researcher, using data from the Survey of Income and Program Participation (SIPP), found that 9–12 percent of families reported losing work hours as a result of child care disruptions. (Boushey, H., *Who Cares? The Child Care Choices of Working Mothers, Center for Economic and Policy Research Data,* 2003) Another study showed that 29 percent of parents experienced a breakdown in their child care arrangement in the last 3 months. (Bond, J., Galinsky, E., and Swanberg, J., *The 1997 National Study of the Changing Workforce,* 1998)

These child care disruptions can negatively impact parental employment. For example, a survey of over 200 mothers working in the restaurant industry in five cities: Chicago, Washington, DC, Detroit, Los Angeles, and New York found that instability in child care arrangements negatively affected their ability to work desirable shifts or to move into better paying positions at the restaurant. (Restaurant Opportunities Centers United, et al., *The Third Shift: Child Care Needs And Access For Working Mothers In Restaurants,* Restaurant Opportunities Centers United, 2013)

4. Child Outcomes and Human Capital Development

Beyond implementing health and safety standards, the Act states that two of the purposes of the program are improving child development of participating children and increasing the number and percentage of low-income children in high-quality child care settings. This final rule places significant emphasis on policies that support those goals.

Child care continuity. The eligibility and redetermination provisions benefit children as well as parents and employers. Continuity in child care arrangements can have a positive impact on a child's cognitive and socio-emotional development. (Raikes, H. *Secure Base for Babies: Applying Attachment Theory Concepts to the Infant Care Setting,* Young Children 51, no. 5, 1996) Young children need to have secure relationships with their caregivers in order to thrive. (Schumacher, R. and Hoffmann, E., *Continuity of Care: Charting Progress for Babies in Child Care Research-Based Rationale,* 2008) Children with fewer changes in child care arrangements are less likely to exhibit behavior problems. (de Schipper, J.C., Van Ijzendoorn, M. & Tavecchio, L., *Stability in Center Day Care: Relations with Children's Well-being and Problem Behavior in Day Care,* Social Development, 2004) Conversely, larger numbers of changes have been linked to less outgoing and more aggressive behaviors among four- and five-year-old children. (Howes, C. & Hamilton, *C.E., Children's Relationships with Caregivers: Mothers and Child Care Teachers,* Child Development, 1992) Continuity of care policies support children's ability to develop nurturing, responsive, and continuous relationships with their caregivers. For school-age children, continuity of care is important because it provides additional exposure to programming that can lead to improved school attendance and academic outcomes. (Welsh, M. Russell, C., Willimans, I., *Promoting Learning and School Attendance through After-School Programs,* Policy Studies Associates, 2002.)

Child care quality beyond health and safety. Health and safety form the foundation of quality but are not sufficient for high-quality development and learning experiences. When children have high quality early care and education, there are benefits to the child and to society. (Yoshikawa, H., et al., *Investing in Our Future: The Evidence Base on Preschool Education,* 2013) The North Carolina Abecedarian Project demonstrated both categories of benefits. The Project enrolled very low-income children from infancy to kindergarten in full day, full year child care with high-quality staff, environments, and curricula. A

longitudinal study following them through age 21 found significant returns on the investment, such as greater school readiness that led to fewer special education and remedial education placements, higher rates of high school completion and jobs, fewer teen pregnancies, and lower rates of juvenile delinquency. (Masse, Leonard N. and Barnett, Steven W., *A Benefit Cost Analysis of the Abecedarian Early Childhood Intervention,* National Institute for Early Education Research; New Brunswick, NJ). Recent follow-up studies to the well-known Abecedarian Project, which began in 1972 and has followed participants from early childhood through young adulthood, found that adults who participated in a high quality early childhood education program are still benefiting from their early experiences. Abecedarian Project participants had significantly more years of education than their control group peers, were four times more likely to earn college degrees, and had lower risk of cardiovascular and metabolic diseases in their mid-30s. (Campbell, Pungello, Burchinal, et al., *Adult Outcomes as a Function of an Early Childhood Educational Program: An Abecedarian Project Follow-Up,* Frank Porter Graham Child Development Institute, Developmental Psychology, 2012 and Campbell, Conti, Heckman et al, *Early Childhood Investments Substantially Boost Adult Health,* Science 28 March 2014, Vol. 343.)

Other cost-benefit analyses of other publicly funded preschool programs with similarly high-quality standards, such as the Chicago Child Parent Centers, demonstrated a high return to society on the public investment. ("Age 21 Cost-Benefit Analysis of the Title I Chicago Child-Parent Centers." Educational Evaluation and Policy Analysis, 24(4): 267–303.)

Recognizing the importance of quality as well as access, the Act and this final rule promote efforts to improve the quality of child care. Chief among these changes is the increased portion of the grant that a Lead Agency must use, at a minimum, for quality improvements. The reauthorized Act increases the prior minimum four percent quality spending requirement to nine percent over time. It also requires States to invest in quality by spending an additional 3 percent for infant and toddler quality. States use the quality dollars for a range of activities that benefit children and providers assisted with CCDF funds and for early childhood systems as a whole, such as State early learning guidelines, professional development, technical assistance such as coaching and mentoring as part of the quality rating and improvement system, scholarships for postsecondary education, and upgrades to materials and equipment.

A critical element in the quality of child care is the knowledge and skill of the child care workforce. The Act and the final rule emphasize the importance of States creating and supporting a progression of professional development, starting with pre-service, and which may include postsecondary education. Quality professional development is critical to creating a workforce that can support children's readiness for success in school and in later years.

As detailed above, there is a growing amount of evidence and recognition that children who experience high-quality early childhood programs are more likely to be better prepared in language, literacy, math and social skills when they enter school, and that these may have lasting positive impacts through adulthood. Because of the strong relationship between early experiences and later success, investments in improving the quality of early childhood and before- and after-school programs can pay large dividends.

5. Provider Stability

The Act and final rule include provisions to strengthen the stability of providers serving CCDF-assisted children. Studies that have interviewed child care providers participating in the subsidy system have shown the importance of policies that improve and stabilize payments to the providers. (Sandstrom, H, Grazi, J., and Henly, J.R., *Clients' Recommendations for Improving the Child Care Subsidy Program,* Urban Institute: Washington, DC, 2015; Adams, G., Snyder, Katherine, and Tout, Kathryn, *Essential But Often Ignored: Child care providers in the subsidy system,* Urban Institute: Washington, DC 2003; Oliveira, Peg, The Child Care Subsidy Program Policy and Practice: *Connecticut Child Care Providers Identify the Problems,* Connecticut Voices for Children, 2006)

In addition to rates that reflect the cost of providing quality services, the manner in which providers are paid is important to the stability of the child care industry. Provider instability has a domino effect that can lead to parent employment instability, an outcome that undercuts the Act's core principle of ensuring that CCDF children have equal access to child care that is comparable to non-CCDF families.

The Act and the final rule require Lead Agencies to pay providers in a timely manner based on generally accepted payment practices for non-CCDF providers. Lead Agencies also must de-link provider payments from children's absences to the extent practicable. Child care providers have many fixed costs, such as salaries, utilities, rent or mortgage.

Surveys and focus groups with child care providers have found that some providers experience problems with late payments, including issues with receiving the full payment on time and difficulties resolving payment disputes. (Adams, G., Rohacek, M., and Snyder, K., *Child Care Voucher Programs: Provider Experiences in Five Counties,* 2008) This research has also found that delayed payments creates significant financial hardships for the impacted providers, and forces some providers to stop serving or limit the number of children receiving child care subsidies. Thus, lack of timely payments and rules on payments that lead to disincentives to taking children with chronic illnesses or other reasons for absences undercut the equal access provision. By addressing these issues, these provisions of the Act and final rule will provide increased stability and benefits for CCDF providers and the families they serve.

Market Rate or Alternative Methodology. The child care market often does not reflect the actual costs of providing child care, let alone the higher costs of quality child care. Financial constraints of low-income parents prevent child care providers from setting their prices to fully cover the cost of care (National Women's Law Center, *Building Blocks: State Child Care Assistance Policies,* 2015; Child Care Aware, *Parents and the High Cost of Child Care,* 2014. Currently, relative to the cost of providing quality care, CCDF subsidy payment rates are low in many States.

A report from the National Women's Law Center on State subsidy policies states that, "only one State had reimbursement rates at the federally recommended level in 2014, a slight decrease from the three States with rates at the recommended level in 2013, and a significant decrease from the twenty-two States with rates at the recommended level in 2001. Thirty-seven States had higher reimbursement rates for higher-quality providers in 2014—an increase from thirty-three States in 2013. However, in more than three-quarters of these States, even the higher rates were below the federally recommended level in 2014." (Turning the Corner: State Child Care Policies 2014. Schulman, K. and Blank, H. National Women's Law Center, Washington, DC 2014) The Act and the final rule require Lead Agencies to set provider payment rates based on the

current, valid market rate survey or alternative methodology.

To allow for equal access, the rule requires that Lead Agencies set base payment rates sufficient to support implementation of the health, safety, quality, and staffing requirements. Establishing base rates at these levels is important to ensure that providers have the resources they need to meet minimum requirements and that providers are not discouraged from serving CCDF children. With subsidy payments higher than the aforementioned base rate, providers can exceed the minimum requirements of health and safety and quality. In doing so, more providers will be able to serve CCDF-assisted children and more quality providers may decide to participate in the subsidy system—giving parents more choices for their children's care. Currently there has been a downward trend in the number of CCDF providers, and providing for a stronger base rate will help mitigate this effect.

C. Distributional Effects

As part of our regulatory analysis, we considered whether changes would disproportionately benefit or harm a particular subpopulation. As discussed above, benefits accrue both directly and indirectly to society. In order to implement the requirements of the CCDBG Act of 2014 and the final rule, States may have to make key decisions about the allocation of resources, and some may shift priorities during the start-up phase and possibly continuing in later years once the State is fully implementing these requirements. The true impact partially depends on the overall funding level. The President's FY2017 Budget request includes additional funding to help States implement the policies required by the reauthorized Act and this final rule, as well as significant new resources across a ten year period to expand access to child care assistance for all eligible families with children under age four years of age. If funding increases sufficiently, both quality and access could be improved.

While, depending on State behavior, there may be some distributional effect related to any cost, below is a discussion of two policy areas that represent specific distributional effects. The first—changes to subsidy policy required by the reauthorized Act—may result (depending on how the State chooses to implement the policy) in families receiving subsidies for a longer period of time, while other families may not be able to access subsidies (absent an increase in funding for the CCDF program). This would be in effect a transfer of subsidy funding that would potentially limit new enrollment for the purposes of keeping existing families enrolled longer. The second area—increased statutory quality spending requirements—may result in a change in which families receive benefits, or how they receive them, by shifting resources away from direct services to quality spending.

Minimum 12-month eligibility and related provisions. In order to reduce administrative burden and to improve the stability and continuity of care in the CCDF program, the CCDBG Act of 2014 and this final rule at §§ 98.20 and 98.21 require Lead Agencies to adopt a number of eligibility policies, including a 12-month minimum period for families to recertify their eligibility. This package of eligibility policies will allow families to maintain their eligibility regardless of temporary changes in work or training/education status or income changes (as long as income remains below 85% of State Median Income). Subsidy receipt is also predictive of more stable child care arrangements. (Brooks, et. al., Impacts of child care subsidies on family and child well-being, Early Childhood Research Quarterly, 2002) Stability of child care arrangements can affect children's healthy development, especially for vulnerable children who may be at special risk of poor developmental outcomes. (Adams, G., and Rohacek, M., *Child Care Instability: Definitions, Context and Policy Implications,* Urban Institute, 2010) Prior to reauthorization, about half the States had eligibility periods less than 12 months—typically providing only six months of eligibility—and families churned on and off the caseload.

Based on qualitative research and discussions with CCDF participants, we expect that longer eligibility periods, and the related policies in the Act and this rule, will increase the average length of time that participating families receive child care subsidies. As part of this RIA, we used CCDF administrative data to model the policy change in the Act and final rule wherein all States would have a minimum of 12-month eligibility periods, to predict whether CCDF families would have longer participation durations and whether there would be any impact on the unduplicated number of families receiving CCDF assistance. The calculations in this estimate are informed by a demonstration project that randomly assigned working Illinois families with moderate incomes (*i.e.,* above the normal eligibility thresholds) to one of three groups. (Michalopoulos, C., Lundquist, E., and Castells, N., *The Effects of Child Care Subsidies for Moderate Income Families in Cook County, Illinois,* MDRC, 2010) Although two of the three groups were both eligible for child care subsidies, one of the groups required recertification every six-months and the other required recertification every 12-months. Over a 24-month follow-up period, the families assigned to 12-month recertification periods received child care subsidies an average of 2.5 months more than families assigned to 6-month recertification periods.

We also examined a "natural experiment" in Georgia, which changed its recertification period from six months to 12 months in April 2009. A preliminary analysis found that families had longer spell lengths after the policy change than families that entered care before the policy change. Although it is uncertain what the driving factor for this was, these findings from Georgia support the hypothesis that longer recertification periods increase the number of months that recipient families participate in the program.

Assuming that States will maintain their average monthly caseloads once they implement the 12-month recertification periods, but will serve fewer unique children over that time period because of longer subsidy participation durations, we estimated the number of families that could be impacted at current funding levels. Decreased churn would not decrease the amount of assistance given, nor would it affect the average monthly caseload, but may result in a decrease in the total number of families served over the course of a given year. We used an analysis of disaggregated CCDF administrative data from FY 2010 to determine the ratio between unique annual counts and average monthly caseloads, which we used for a baseline ratio to apply to the average monthly caseload totals from FY 2012 (which showed 609,800 children being served in an average month in the 25 States with eligibility periods less than 12 months). With this data, we estimated the unique caseload size of each State in FY 2012, which is the last year for which we have caseload estimates and documentation of policies (which showed 1,053,773 unique children received services at some point during the year in the 25 States). Based on these assumptions and using the results from the Illinois study to estimate the impact on length of subsidy receipt, we estimate that the reduction in unique children served in a given year after the policy change could be approximately 162,000 children.

Increase in Quality Set-aside. As discussed above in the analysis of benefits, the increased quality set-aside and the new infant and toddler set-aside required in reauthorization will benefit children and, when coupled with training and higher rates, child care providers. Lead Agencies are not required to use quality funds to support the quality of care for only CCDF children. Thus, quality investments often support the entire child care system in the State, especially because of the high investments in licensing, training, and quality rating and improvement systems. Therefore, these increased investments will have an impact broader than families receiving CCDF assistance, and will continue to improve the quality of care available to all children, regardless of subsidy receipt.

We do not expect the increase in the quality set-aside to have a significant impact on caseload, particularly since the majority of States are already spending more than the new 9% quality set-aside requirement (see Table 9 below). Other States that do not currently spend above this level will have time to phase-in the increases and will likely use these additional increases to cover several of the new health and safety and professional development requirements. Therefore, any caseload impact would have already been included in the costs associated with those provisions. However, we recognize some Lead Agencies will have to reallocate funds currently being used for other activities, including direct services, so we are discussing possible distributional effects here. Currently, about 13 percent of CCDF expenditures are spent on quality improvement activities, including targeted funds included in appropriations. This amount is more than the full percentage to be set aside for the quality and infant and toddler set-asides in FY 2020, once fully phased-in. However, this is a national figure and may not provide a complete picture of how many States and Territories might have to adjust their quality expenditures to meet new requirements.

Using FY 2012 CCDF expenditure data, we did an analysis of the number of States and Territories that will have to increase their quality expenditures in order to meet the requirements in the CCDBG Act of 2014 and incorporated into this final rule at § 98.50(b)(1). (Note: Compliance with spending requirements is determined after a full grant award is complete. States and Territories have three years to complete their grant awards. Therefore, the most recent award year for which we have data is FY 2012.) We included regular quality expenditures as well as the amount of funds spent for the "quality expansion" and "school-age/resource and referral" targeted funds. The infant and toddler targeted funds were not included in this analysis because they have now been incorporated into the statute. Instead, we have a separate analysis of the new infant and toddler set-aside below. Below is a summary of the number of States and Territories at different amounts of quality expenditures:

TABLE 9—QUALITY EXPENDITURES

% Quality expenditures (FY 2012)	Number of states and territories
<7%	6
7% (effective FY 2016 and FY 2017)	6
8% (effective FY 2018 and FY 2019)	5
9% (effective FY 2020 and succeeding years)	3
>9%	36

Based on this data, 39 States will not have to adjust the percent of funds they expend on quality activities, while six States and Territories will have to increase the percent of funds they spend on quality activities by FY 2016. For the other States and Territories, it varies when each will need to change the amount they spend on quality activities—12 States will have to adjust by FY 2018 to meet the eight percent requirement; and 17 States will have to adjust by FY 2020 to meet the nine percent requirement.

In addition to the primary set-aside for quality activities, this final rule incorporates at § 98.50(b)(2) a new requirement of the Act that, beginning in FY 2017 and each succeeding fiscal year, Lead Agencies must expend at least three percent of their full awards (including Discretionary, Mandatory, and Federal and State Matching funds) on activities that relates to the care of infants and toddlers. Since FY 2001, federal appropriations law has included a requirement for Lead Agencies to spend a certain amount of discretionary funds on activities to improve the quality of care for infants and toddlers. In FY 2015, this set-aside was $102 million. The new three percent reservation represents an increase of about $129 million (for a new amount of $231million), based on FY 2012 State and Territory expenditures.

Lead Agencies do not currently report how much of their general quality funds are spent on activities targeted to improving care for infants and toddlers. Therefore, we only have the amount of targeted funds they spent on infant and toddler activities, which for all but five States and Territories is below the new three percent requirement. The increase necessary ranges from State to State, from $38,000 for Idaho to $21 million for New York. The average increase will be $2.5 million per State. However, as these estimates do not include any regular quality funds overestimating the required increases for the majority of States and Territories.

While a small number of States (five) will have to increase their quality expenditures, since the national average quality expenditure is already above the 12% target for the quality and infant and toddler set-asides, we are not attributing a reduction in the number of children served as a result of this policy change.

D. Analysis of Regulatory Alternatives

In developing this final rule, we considered alternative ways to meet the purposes of the reauthorized Act. There are areas of the Act that we are interpreting and clarifying through this rule. Our interpretation of the Act remains within the legal parameters of the statute and is consistent with the goals and purposes of the Act. Below we include a discussion of areas that we clarified through the final rule: (1) Monitoring for licensed non-CCDF providers, (2) background checks for regulated and registered providers and (3) background checks for non-caregivers.

For the purposes of this analysis, we are discussing the costs, benefits, and potential caseload impacts related to meeting these new requirements. However, it is particularly difficult to predict caseload impact due to a variety of unknown factors, including future federal funding levels. Even if we were to assume level federal funding, States could allocate new funds, redirect current quality spending (*e.g.*, by changing quality activities to focus on health & safety), shift costs to parents or providers, or use a combination of these approaches to pay for new requirements. The caseload estimates in the following discussion are based on the assumption that the entire cost of meeting this requirement are covered by redistributing funds that would otherwise be used for direct services. Therefore, these caseload impact figures should be considered upper bound estimates and are mostly likely significant overestimates.

Background Checks for Regulated and Registered Providers: At § 98.43(a)(1)(i), we are applying the background check requirements to all child care staff

members (including prospective child care staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver CCDF services. This language includes all licensed, regulated, or registered providers, regardless of whether they receive CCDF funds and all license-exempt CCDF providers (with the exception of those related to all children in their care).

The alternative to this policy would be to limit background checks to only providers receiving CCDF assistance. While we acknowledge that others may have interpreted the statute differently, there is justification for applying this requirement in the broadest terms for two important reasons. First, it is our strong belief that all parents using child care deserve this basic protection of knowing that those who are trusted with the care of their children do not have criminal backgrounds that may endanger the well-being of their children.

Second, limiting those child care providers who are subject to background checks, has the potential to severely restrict parental choice and equal access for CCDF children. If all child care providers are not subject to comprehensive background checks, providers could opt to not serve CCDF children thereby restricting access. Creating a bifurcated system in which CCDF children have access to only a portion of child care providers who meet applicable standards would be incongruous with the purposes of the Act and would not serve to advance the important goal of serving more low-income children in high-quality care.

Choosing this would present additional costs to the alternative of limiting background checks to only CCDF providers. The cost of the background check requirement for only CCDF providers would be approximately $11.9 million per year (estimated using a 3% discount rate). Using the methodology discussed in detail in the background check section of the preamble, we estimate the additional cost of requiring background checks of all licensed and regulated providers, rather than just those who are eligible to deliver CCDF services, to be approximately $1.7 million annually (estimated using a 3% discount rate), which would amount to an upper bound caseload impact of about 300 fewer children served per year.

Background Checks for Non-Caregivers: The Act defines a child care staff member as someone (unless they are related to *all* children in care) who is employed by the child care provider for compensation or whose activities involve unsupervised access to children who are cared for by the child care provider. This final rule requires individuals, age 18 or older, residing in a family child care home be subject to background checks. The alternative to this would be to not require background checks of other individuals living in the family child care home. However, we chose this policy because it is reasonable to assume that these individuals may have unsupervised access to children. Because we are including these individuals in the definition of child care staff members, they will be subject to the same requirements and will be allowed the same appeals process as employees.

More than forty States require some type of background check of family members 18 years of age or older that reside in the family child care home (*Leaving Child Care to Chance: NACCRRA's Ranking of State Standards and Oversight for Small Family Child Care Homes,* National Association of Child Care Resource and Referral Agencies, 2012).

While the total cost of the background check requirement is approximately $13.6 million, we can isolate the costs of applying the background checks to non-caregiver individuals, we estimate the cost to be approximately $3 million annually (estimated using a 3% discount rate), which would amount to a upper bound caseload impact of approximately 550 fewer children served per year.

E. Break Even Analysis for Reductions in Injuries and Deaths

This section estimates the potential benefits associated with the elimination of injuries and deaths in child care settings in the United States, and the proportion of fatalities and injuries, which, if eliminated by the provisions discussed here, would justify their costs on their own. Standard methods are used to monetize the value of these potential benefits. Although children receiving subsidies through the Child Care and Development Fund (CCDF) are the individuals that will likely benefit most from the rule's overall health and safety provisions, we conduct this break even analysis using data on children in all child care settings since children in non-CCDF arrangements will directly benefit from the extension of background check requirements and may see additional benefits as a result of other health and safety and quality provisions in the final rule. As described above, the primary regulatory alternative in implementing health and safety provisions would be to restrict background checks provisions and monitoring requirements. Therefore, this analysis discusses the costs and benefits of the final rule relative to that alternative.

The benefits estimated for this analysis are derived from voluntary data reporting on fatalities and injuries in the child care setting to ACF in a Quality Performance Report (QPR). These figures are supplemented by data from several other sources. Although many States contribute data to the QPR report, data on fatalities and injuries is not available for all States. To estimate fatalities and injuries in the child care setting at the national level in 2014 using the QPR data, we impute estimated fatalities and injuries for States with incomplete reports. For States with no reported data for 2014, we assume that the injury or fatality rate per provider is equal to the average injury or fatality rate per provider across States with available 2014 data.

To monetize benefits from reductions in injury rates, we rely on data on the cost of injury from the Centers for Disease Control (CDC). In particular, we use CDC data to calculate the cost of non-fatal injuries resulting in emergency room treatment and/or hospitalization for children age 12 and under, which includes medical costs as well as lost productivity costs for caretakers, based on 2012 data.[1] After adjusting for inflation using the Gross Domestic Product (GDP) deflator from the Bureau of Economic Analysis (BEA), the cost per injury for children age 12 and under is $8,095 in 2014 dollars. The benefit of a reduction in the injury rate, then, is the reduction in the medical costs and productivity losses associated with the reduction in injuries. Note that this does not include the dollar value of any changes in health status for the injured individuals, which implies that these estimates understate the value of reductions in injuries in the child care setting. Based on QPR data, we estimate that there were 18,209 injuries in child care settings in 2014. To calculate the monetary value of a reduction in the injury rate in child care settings due to this rule, we multiplied the expected number of avoided injuries in each year by the value of eliminating each injury. For simplicity, we assume that the number of prevented injuries is the same in each year after implementation of the requirements, and that the cost of injury, in 2014 dollars, is constant over time. This method implies that the present value of eliminating all injuries

[1] CDC provided updated estimates of the cost of injury based on Cost of Injury Reports 2005 and 2012 data on non-fatal injuries. For more information, see *http://www.cdc.gov/injury/wisqars/cost/cost-learn-more.html.*

in the child care setting over the period examined in this rule, using a 3% discount rate, is approximately $1.30 billion.

To monetize the value of reductions in mortality rates, we use estimates of the number of child fatalities in child care settings and information on the value of a statistical life for children. The number of child fatalities in the child care setting is estimated by combining two numbers: (1) The number of fatalities due to Sudden Infant Death Syndrome (SIDS), and (2) the number of fatalities due to causes other than SIDS. These two numbers are estimated separately because SIDS is one type of fatality that is likely to be impacted by the health and safety provisions in the Act and because the Centers for Disease Control (CDC) [2] publishes accurate estimates for this type of death.[3] According to CDC, there were 1,563 deaths due to SIDS in 2011. Research from a study in 2000 estimated that 14.8 percent [4] of SIDS fatalities took place in a family child care or a child care center. After applying the 14.8 percent to the 1,563 SIDS deaths, we estimate that the number of SIDS deaths in child care settings were 231 in 2014.

The number of non-SIDS deaths in 2014 is estimated based on QPR data. Information on cause of death were reported for 18 deaths in the 2014 QPR data, of which 5 were due to SIDS and 13 were due to other causes. Based on this information, we estimate that 72 percent of deaths in child care settings reported in QPR data were due to causes other than SIDS. After adding the 82 fatalities from non-SIDS as reported in the QPR data to the 231 fatalities from SIDS, we arrive at a sum of 313 fatalities in child care settings.

A 2010 study estimates that the value of a statistical life for children to be $12–15 million [5] After taking the mean of this range and adjusting it for inflation using the GDP deflator, we arrive at $14.5 million in 2014 dollars per fatality. For simplicity, we assume that the potential number of lives saved is the same in each year after implementation of the requirements. We follow Department of Transportation (DOT) guidance [6] to adjust the value of a statistical life for real income growth, increasing it by 1.07 percent each year. To calculate the dollar value of reductions in mortality, we calculate the number of statistical lives saved, and multiply that number by the relevant value of a statistical life. This method implies that the present value of eliminating all deaths in the child care setting over the period examined in this rule, using a 3 percent discount rate, is approximately $44.4 billion.

Next, we estimate the proportion of fatalities and injuries which, if eliminated by the provision that extends background checks (approximately $4 million per year), would justify their costs on their own. Based on the assumptions and methodologies described above, the present value of the injury and mortality rate reduction benefits of the rule, using a 3 percent discount rate, would equal the costs of this provision if fatalities and injuries were reduced by approximately 0.08 percent over the period examined in this rule. Note that this does not include other benefits associated with this rule.

F. Accounting Statement—Table of Quantified Money Costs and Opportunity Costs

As required by OMB Circular A–4, we have prepared an accounting statement table showing the classification of the impacts associated with implementation of this final rule.

TABLE 10—QUANTIFIED MONEY COSTS, OPPORTUNITY COSTS, AND TRANSFERS

[$ in millions]

	Phase-in annual average (years 1–5)	On-going annual average (years 6–10)	Annualized cost (over 10 years)			Total present value (over 10 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Money Costs ($ in millions)								
Health and Safety:								
Monitoring	158.4	197.6	178.0	175.4	171.9	1,779.9	1,541.5	1,292.2
Bkgd Checks	9.0	18.9	13.9	13.6	13.3	139.2	119.7	99.6
Training	15.4	10.5	12.9	13.2	13.5	129.3	115.8	101.5
Admin*	9.1	11.3	10.2	10.0	9.9	101.7	88.2	74.2
IT and Infrastructure*	9.1	11.3	10.2	10.0	9.9	101.7	88.2	74.2
Consumer Education:								
Website	12.8	11.8	12.3	12.4	12.5	123.0	108.6	93.6
Statement	0.5	0.8	0.7	0.6	0.6	6.5	5.5	4.5
Money Costs Total	214.3	262.2	238.2	235.2	231.6	2,381.3	2,067.5	1,739.8
Opportunity Costs—Health and Safety ($ in millions)								
Monitoring	13.1	16.4	14.7	14.5	14.2	147.4	127.6	106.9
Bkgd Checks	6.3	7.9	7.1	7.1	7.1	71.1	62.4	53.3
Training	43.8	29.9	36.8	37.6	38.5	368.4	330.0	289.3
Opportunity Costs Total	63.2	54.2	58.6	59.2	59.8	586.9	520.0	449.5
Cost Total	277.5	316.4	296.8	294.4	291.4	2,968.2	2,587.5	2,189.3
Transfers ($ in millions)								
Increased Subsidy	478.8	1,281.0	879.9	839.1	786.1	8,799.0	7,372.4	5,907.7

[2] For more information, see *http://wonder.cdc.gov.*

[3] Our review of the QPR data conclude that the number of deaths and injuries reported are likely to be undercounts because some States do not collect data from some types of child care providers.

[4] Moon, Rachel Y., Kantilal M. Patel, and Sarah J. McDermott Shaefer. "Sudden infant death syndrome in child care settings." *Pediatrics* 106.2 (2000): 295–300.

[5] Hammitt, James K., and Kevin Haninger. "Valuing fatal risks to children and adults: Effects of disease, latency, and risk aversion." *Journal of Risk and Uncertainty* 40.1 (2010): 57–83 (estimate derived using stated-preference surveys inquiring about willingness to pay to reduce risks to one's child).

[6] For more information, see *http://www.dot.gov/sites/dot.dev/files/docs/VSL%20Guidance.doc.*

TABLE 10—QUANTIFIED MONEY COSTS, OPPORTUNITY COSTS, AND TRANSFERS—Continued
[$ in millions]

	Phase-in annual average (years 1–5)	On-going annual average (years 6–10)	Annualized cost (over 10 years)			Total present value (over 10 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Transfers Total	478.8	1,281.0	879.9	839.1	786.1	8,799.0	7,372.4	5,907.7
Territories and Tribes ($ in millions)								
2.5%)	18.9	39.9	29.4	28.3	26.9	294.2	249.0	202.4
Grand Total ($ in millions)								
Costs and Transfers	775.2	1,637.3	1,206.1	1,161.8	1,104.4	12,061.4	10,208.9	8,299.4

*Administrative and IT/Infrastructure costs are only applied to Health and Safety requirements. Other costs have administrative costs already built into their cost estimates.

d. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act (UMRA) was enacted to avoid imposing unfunded federal mandates on State, local, and Tribal governments, or on the private sector. Most of UMRA's provisions apply to proposed and final rules for which a general notice of proposed rulemaking was published, and that include a federal mandate that may result in expenditures by State, local, or Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The regulatory impact analysis includes information about the costs of this regulation. As explained throughout the preamble to this final rule, ACF has ensured that the rule is based on provisions of the CCDBG Act of 2014. We have provided for Lead Agency flexibility in many areas to limit burden and allow for cost-effective implementation of the statutory requirements. In addition, States, Territories and Tribes receive well over $5 billion annually in federal funding to implement the program.

e. Executive Order 13045 on Protection of Children

Executive Order 13045 applies to economically significant rules under Executive Order 12866 and directs agencies to identify and assess environmental health risks and safety risks that may disproportionately affect children. Agencies shall provide an evaluation of the environmental health or safety effects of the planned regulation on children and an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency. This regulatory action has been identified as being economically significant and will positively impact children by lowering health and safety risks in child care settings funded by CCDF. The regulatory impact analysis includes a full explanation of the final rule's expected impact on children and regulatory alternatives considered by the agency.

f. Executive Order 13175 on Consultation With Indian Tribes

Executive Order 13175 requires agencies to consult with Tribal leaders and Tribal officials early in the process of developing regulations and prior to the formal promulgation of the regulations. Agencies also must include a Tribal impact statement, which includes a description of the agency's prior consultation with Tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of Tribal officials have been met. ACF is committed to continued consultation and collaboration with Tribes, and this final rule meets the requirements of Executive Order 13175. The discussion of subpart I in section IV of the preamble serves as the Tribal impact statement and contains a detailed description of the consultation and outreach on this final rule.

g. Paperwork Reduction Act

A number of sections in this final rule refer to collections of information, all of which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501 *et seq.*). In some instances (listed in the table below), the collections of information for the relevant sections of this final rule have been previously approved under a series of OMB control numbers.

CCDF Title/Code	Relevant section in the final rule	OMB Control number	Expiration date
ACF–118 (CCDF State and Territory Plan)	§§ 98.14, 98.15, and 98.16 (and related provisions)	0970–0114	12/31/2018
ACF–800 (Annual Aggregate Data Reporting—States and Territories).	§ 98.71	0970–0150	12/31/2018
ACF–801 (Monthly Case-Level Data Reporting—States and Territories).	§ 98.71	0970–0167	12/31/2018
ACF–403, ACF–404, ACF–405 (Error Rate Reporting)	§§ 98.100 and 98.102	0970–0323	08/31/2018
ACF–700 (Administrative Data Report—Tribes)	§ 98.71	0970–0241	10/31/2016
ACF–696–T (Financial Reporting—Tribes)	§ 98.65	0970–0195	05/31/2016

• *ACF–118 (CCDF State and Territory Plan).* The Act and this final rule add several new requirements that States and Territories must report in the CCDF Plans, including provisions related to health and safety requirements,

consumer education, and eligibility policies. State and Territorial compliance with the final rule will be determined in part through the review of CCDF Plans and Plan amendments. We have finalized a revised Plan that reflects requirements under the Act.

• *ACF–800 (Annual Aggregate Data Reporting—States and Territories).* The Act and this final rule add new annual aggregate data reporting requirements. Through the OMB clearance process, we finalized revised forms and instructions reflecting these changes.

• *ACF–801 (Monthly Case-Level Data Reporting—States and Territories).* The Act and this final rule add new case-level data reporting requirements. Through the OMB clearance process, we finalized revised forms and instructions reflecting the majority of these changes.

• *ACF–403, ACF–404, ACF–405 (Error Rate Reporting).* The final rule does not make changes to this information collection, which has been previously approved by OMB.

• *ACF–700 (Administrative Data Report—Tribes).* The final rule provides reduced regulatory specificity regarding the information collection, but does not change the content.

• *ACF–696–T (Financial Reporting-Tribes).* The final rule does not make any changes to this information collection.

In other instances, which are listed below, the final rule modifies several previously-approved information collections, but ACF has not yet initiated the OMB approval process to implement these changes, or the approval process is currently underway but not yet completed. ACF will publish **Federal Register** notices soliciting public comment on specific revisions to these information collections and the associated burden estimates, and will make available the proposed forms and instructions for review.

CCDF Title/Code	Relevant section in the final rule	OMB Control number	Expiration date
ACF–696 (Financial Reporting—States)	§ 98.65	0970–0163	05/31/2016
Quality Progress Report (QPR)—States and Territories.	§ 98.53	0970–0114	05/13/2016
ACF–118–A (CCDF Tribal Plan)	§§ 98.14, 98.16, 98.18, 98.81, and 98.83 (and related sections).	0970–0198	09/30/2019
CCDF–ACF–PI–2013–01 (Tribal Application for Construction Funds).	§ 98.84	0970–0160	03/31/2016

• *ACF–696 (Financial Reporting—States).* The final rule modifies this existing information collection to require States and Territories to report financial data on any sub-categories of quality activities as required by ACF.

• *Quality Progress Report (QPR)—States and Territories.* The final rule amends the existing information collection to require States and Territories to submit reports on quality improvement, measures to evaluate progress, and other information.

• *ACF–118–A (CCDF Tribal Plan)* The final rule changes requirements that Tribes and Tribal organizations are required to report in the CCDF Plans, and indicates that Plan and application requirements will vary based on the size of a Tribe's allocation. Tribal compliance with the final rule will be determined in part through the review of Tribal CCDF Plans and Plan amendments. We are in the process of revising the Tribal Plan to reflect many of the priority areas reflected in the reauthorized Act.

• *CCDF–ACF–PI–2013–01 (Tribal Application for Construction Funds).* The Act and this final rule modify this existing information by changing requirements related to maintaining the level of child care services as a condition of using funds for construction and renovation. We are updating this information collection through the OMB process to reflect the changes.

The table below provides annual burden estimates for the existing information collections that are modified by this final rule. These estimates reflect the total burden of each information collection, including the changes made by the final rule.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Quality Progress Report (QPR)—States and Territories	56	1	50	2800
ACF—696 (Financial Reporting-States)	56	4	5.5	1,232
ACF–118–A (CCDF Tribal Plan)	257	0.33	120	10,177
CCDF–ACF–PI–2013–01 (Tribal Application for Construction Funds)	5	1	20	100

Finally, this final rule contains two new information collection requirements, and the table below provides an annual burden hour estimate for these collections. First, § 98.33 requires Lead Agencies to collect and disseminate consumer education information to parents of eligible children, the general public, and providers through a consumer-friendly and easily accessible Web site. This Web site will include information about State or Territory policies (related to licensing, monitoring, and background checks) as well as provider-specific information, including results of monitoring and inspection reports and, if available, information about quality. This requirement applies to the 50 States, the District of Columbia, and 5 Territories that receive CCDF grants. In estimating the burden estimate, we considered the fact that many States already have existing Web sites. Even in States without an existing Web site, much of the information will be available from licensing agencies, quality rating and improvement systems, and other sources. The burden hour estimate below reflects an average estimate, recognizing that there will be significant State variation. The estimate is annualized to encompass initial data entry as well as updates to the Web site over time.

Second, § 98.42 requires Lead Agencies to establish procedures that require child care providers that care for children receiving CCDF subsidies to report to a designated State, Territorial, or Tribal entity any serious injuries or deaths of children occurring in child care. This is necessary to be able to examine the circumstances leading to serious injury or death of children in child care, and, if necessary, make adjustments to health and safety requirements and enforcement of those requirements in order to prevent any future tragedies. The requirement would potentially apply to the nearly 390,000 child care providers who serve children receiving CCDF subsidies, but only a portion of these providers would need to report, since our burden estimate assumes that no report is required in the absence of serious injury or death.

Using currently available aggregate data on child deaths and injuries, we estimated the average number of provider respondents would be approximately 10,000 annually. In estimating the burden, we considered that more than half the States already have reporting requirements in place as part of their licensing procedures for child care providers. States, Territories, and Tribes have flexibility in specifying the particular reporting requirements, such as timeframes and which serious injuries must be reported. While the reporting procedures will vary by jurisdiction, we anticipate that most providers will need to complete a form or otherwise provide written information.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Consumer Education Website	56 States/Territories	1	300	16,800
Reporting of Serious Injuries and Death	10,000 child care providers	1	1	10,000

We did not receive any public comments on these burden estimates, which were included in the NPRM. The information collection provisions in this final rule were submitted to OMB for review as required by section 3507(d) of the Paperwork Reduction Act and were assigned OMB control number 0970–0473. Before the effective date of this final rule, ACF will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

h. Congressional Review

The Congressional Review Act (CRA) allows Congress to review "major" rules issued by federal agencies before the rules take effect. The CRA defines a major rule as one that has resulted or is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. This regulation is a major rule because it will likely result in an annual effect of more than $100 million on the economy. Therefore, this final rule is being transmitted to Congress and the Comptroller General for review.

i. Executive Order 13132; Federalism Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations.

Consultations with State and local officials. After passage of the CCDBG Act of 2014, the Office of Child Care (OCC) in the Office of the Deputy Assistant Secretary for Early Childhood Development in ACF conducted outreach to engage with a variety of stakeholders to better understand the implications of its provisions. OCC created a reauthorization page on its Web site to provide public information and a specific email address to submit general questions. OCC received approximately 650 questions and comments through this email address, webinars, inquiries to regional offices, and meetings with grantees. OCC leadership and staff participated in more than 21 listening sessions with approximately 675 people representing diverse national, State, and local stakeholders regarding the reauthorized Act, held webinars and gave presentations at national conferences. Participants included State human services agencies, child care providers, parents with children in child care, child care resource and referral agencies, national and State advocacy groups, national stakeholders including faith-based communities, after-school and school age child care providers, child care researchers, State and local early childhood organizations, provider associations, labor unions, and National Head Start Association members. Furthermore, OCC held five meetings with State and Territory CCDF administrators and a series of consultations with Tribal leaders to describe the updated Act and to gather input from federal grantees with responsibility for operating the CCDF program.

In addition, ACF reviewed the records of comments received after issuing a now withdrawn NPRM for CCDF in May 2013 prior to passage of the CCDBG Act of 2014 by Congress. Many, but not all, of the key components of the Act are in alignment with provisions included in that NPRM.

Finally, we carefully reviewed the nearly 150 comments received on the December 2015 NPRM after widely disseminating the NPRM to solicit comments. We also held a Tribal consultation on the NPRM during the comment period.

Nature of concerns and the need to issue this final rule. State, Territorial and Tribal CCDF Lead Agencies want to provide family friendly child care assistance and support increased quality of child care services, but are concerned about the cost of the reauthorized Act and need for grantee flexibility. We seriously considered these views in developing the final rule. We also completed a regulatory impact analysis to fully assess costs and benefits of the new requirements. We recognize that a number of the new regulatory provisions will require some States,

Territories, and Tribal Lead Agencies to re-direct CCDF funds to implement specific provisions.

Extent to which we meet those concerns. Each fiscal year ACF provides to States, Territories, and Tribes $5.7 billion in annual funding to implement the CCDF program. Additionally, the regulatory changes we made to the Act and this final rule are based on policy practices already implemented by many States. Finally, in several areas, the final rule increases the flexibility available to States, Territories, and Tribes in administering the program (*e.g.*, waiving family co-payments, defining protective services).

j. Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires federal agencies to determine whether a regulation may negatively impact family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This final rule will not have a negative impact on the autonomy or integrity of the family as an institution.

Accordingly, we concluded that it is not necessary to prepare a family policymaking assessment. In fact, the final rule will have positive benefits by improving health and safety protections and the quality of care that children receive, as well as improving transparency for parents about the child care options available to them. The provisions in this final rule will enable parents make more informed child care decisions and increases continuity of care through family-friendly practices.

List of Subjects in 45 CFR Part 98

Child care, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program Number 93.575, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

Dated: July 14, 2016.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

Approved: July 18, 2016.

Sylvia M. Burwell,

Secretary.

Accordingly, the Department of Health and Human Services amends 45 CFR part 98 as follows:

PART 98—CHILD CARE AND DEVELOPMENT FUND

■ 1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 618, 9858.

■ 2. Revise § 98.1 to read as follows:

§ 98.1 Purposes.

(a) The purposes of the CCDF are:

(1) To allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within that State;

(2) To promote parental choice to empower working parents to make their own decisions regarding the child care services that best suits their family's needs;

(3) To encourage States to provide consumer education information to help parents make informed choices about child care services and to promote involvement by parents and family members in the development of their children in child care settings;

(4) To assist States in delivering high-quality, coordinated early childhood care and education services to maximize parents' options and support parents trying to achieve independence from public assistance;

(5) To assist States in improving the overall quality of child care services and programs by implementing the health, safety, licensing, training, and oversight standards established in this subchapter and in State law (including State regulations);

(6) To improve child care and development of participating children; and

(7) To increase the number and percentage of low-income children in high-quality child care settings.

(b) The purpose of this part is to provide the basis for administration of the Fund. These regulations provide that State, Territorial, and Tribal Lead Agencies:

(1) Maximize parental choice of safe, healthy and nurturing child care settings through the use of certificates and through grants and contracts, and by providing parents with information about child care programs;

(2) Include in their programs a broad range of child care providers, including center-based care, family child care, in home care, care provided by relatives and sectarian child care providers;

(3) Improve the quality and supply of child care and before- and after-school care services that meet applicable requirements and promote healthy child development and learning and family economic stability;

(4) Coordinate planning and delivery of services at all levels, including Federal, State, Tribal, and local;

(5) Design flexible programs that provide for the changing needs of recipient families and engage families in their children's development and learning;

(6) Administer the CCDF responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided;

(7) Design programs that provide uninterrupted service to families and providers, to the extent allowed under the statute, to support parental education, training, and employment and continuity of care that minimizes disruptions to children's learning and development;

(8) Provide a progression of training and professional development opportunities for caregivers, teachers, and directors to increase their effectiveness in supporting children's development and learning and strengthen and retain (including through financial incentives and compensation improvements) the child care workforce.

■ 3. Amend § 98.2 as follows:

■ a. Revise the definition of *Categories of care;*

■ b. Add in alphabetical order definitions for *Child experiencing homelessness, Child with a disability,* and *Director;*

■ c. Revise the definition of *Eligible child care provider;*

■ d. Add in alphabetical order a definition for *English learner;*

■ e. Revise the definition of *Family child care provider;*

■ f. Remove the definition of *Group home child care provider;* and

■ g. Revise the definitions of *Lead Agency, Programs,* and *Sliding fee scale;* and

■ h. Add in alphabetical order a definition for *Teacher.*

The revisions and additions read as follows:

§ 98.2 Definitions.

* * * * *

Categories of care means center-based child care, family child care, and in home care;

* * * * *

Child experiencing homelessness means a child who is homeless as defined in section 725 of Subtitle VII–B of the McKinney-Vento Act (42 U.S.C. 11434a);

Child with a disability means:

(1) A child with a disability, as defined in section 602 of the Individuals

with Disabilities Education Act (20 U.S.C. 1401);

(2) A child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*);

(3) A child who is less than 13 years of age and who is eligible for services under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(4) A child with a disability, as defined by the State, Territory or Tribe involved;

* * * * *

Director means a person who has primary responsibility for the daily operations and management for a child care provider, which may include a family child care provider, and which may serve children from birth to kindergarten entry and children in school-age child care;

* * * * *

Eligible child care provider means:

(1) A center-based child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that—

(i) Is licensed, regulated, or registered under applicable State or local law as described in § 98.40; and

(ii) Satisfies State and local requirements, including those referred to in § 98.41 applicable to the child care services it provides; or

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, siblings (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved;

English learner means an individual who is an English learner, as defined in section 8101 of the Elementary and Secondary Education Act of 1965 or who is limited English proficient, as defined in section 637 of the Head Start Act (42 U.S.C. 9832);

* * * * *

Family child care provider means one or more individual(s) who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

* * * * *

Lead Agency means the State, territorial or tribal entity, or joint interagency office, designated or established under §§ 98.10 and 98.16(a) to which a grant is awarded and that is accountable for the use of the funds provided. The Lead Agency is the entire legal entity even if only a particular component of the entity is designated in the grant award document;

* * * * *

Programs refers generically to all activities under the CCDF, including child care services and other activities pursuant to § 98.50 as well as quality activities pursuant to § 98.53;

* * * * *

Sliding fee scale means a system of cost-sharing by a family based on income and size of the family, in accordance with § 98.45(k);

* * * * *

Teacher means a lead teacher, teacher, teacher assistant, or teacher aide who is employed by a child care provider for compensation on a regular basis, or a family child care provider, and whose responsibilities and activities are to organize, guide, and implement activities in a group or individual basis, or to assist a teacher or lead teacher in such activities, to further the cognitive, social, emotional, and physical development of children from birth to kindergarten entry and children in school-age child care;

* * * * *

■ 4. In § 98.10, revise the introductory text and paragraphs (d) and (e) and add paragraph (f) to read as follows:

§ 98.10 Lead Agency responsibilities.

The Lead Agency (which may be an appropriate collaborative agency), or a joint interagency office, as designated or established by the Governor of the State (or by the appropriate Tribal leader or applicant), shall:

* * * * *

(d) Hold at least one public hearing in accordance with § 98.14(c);

(e) Coordinate CCDF services pursuant to § 98.12; and

(f) Consult, collaborate, and coordinate in the development of the State Plan in a timely manner with Indian Tribes or tribal organizations in the State (at the option of the Tribe or tribal organization).

■ 5. In § 98.11, add a sentence to the end of paragraph (a)(3) and revise paragraph (b)(5) to read as follows:

§ 98.11 Administration under contracts and agreements.

(a) * * *

(3) * * * The contents of the written agreement may vary based on the role the agency is asked to assume or the type of project undertaken, but must include, at a minimum, tasks to be performed, a schedule for completing tasks, a budget which itemizes categorical expenditures consistent with CCDF requirements at § 98.65(h), and indicators or measures to assess performance.

(b) * * *

(5) Oversee the expenditure of funds by subrecipients and contractors, in accordance with 75 CFR parts 351 to 353;

* * * * *

■ 6. In § 98.12, revise paragraph (c) to read as follows:

§ 98.12 Coordination and consultation.

* * * * *

(c) Coordinate, to the maximum extent feasible, per § 98.10(f) with any Indian Tribes in the State receiving CCDF funds in accordance with subpart I of this part.

■ 7. Amend § 98.14 as follows:

■ a. Revise paragraph (a)(1) introductory text;

■ b. Redesignate paragraphs (a)(1)(A) through (D) as paragraphs (a)(1)(i) through (iv);

■ c. Revise newly redesignated paragraphs (a)(1)(iii) and (iv);

■ d. Add paragraphs (a)(1)(v) through (xiv) and (a)(3) and (4);

■ e. Revise paragraph (c)(3); and

■ f. Add paragraph (d).

The revisions and additions read as follows:

§ 98.14 Plan process.

* * * * *

(a)(1) Coordinate the provision of child care services funded under this part with other Federal, State, and local child care and early childhood development programs (including such programs for the benefit of Indian children, infants and toddlers, children with disabilities, children experiencing homelessness, and children in foster care) to expand accessibility and continuity of care as well as full-day services. The Lead Agency shall also coordinate the provision of services with the State, and if applicable, tribal agencies responsible for:

* * * * *

(iii) Public education (including agencies responsible for prekindergarten services, if applicable, and early intervention and preschool services provided under Part B and C of the Individuals with Disabilities Education Act (20 U.S.C. 1400));

(iv) Providing Temporary Assistance for Needy Families;

(v) Child care licensing;

(vi) Head Start collaboration, as authorized by the Head Start Act (42 U.S.C. 9831 *et seq.*);

(vii) State Advisory Council on Early Childhood Education and Care

(designated or established pursuant to the Head Start Act (42 U.S.C. 9831 *et seq.*)) or similar coordinating body;

(viii) Statewide after-school network or other coordinating entity for out-of-school time care (if applicable);

(ix) Emergency management and response;

(x) Child and Adult Care Food Program (CACFP) authorized by the National School Lunch Act (42 U.S.C. 1766) and other relevant nutrition programs;

(xi) Services for children experiencing homelessness, including State Coordinators of Education for Homeless Children and Youth (EHCY State Coordinators) and, to the extent practicable, local liaisons designated by Local Educational Agencies (LEAs) in the State as required by the McKinney-Vento Act (42 U.S.C. 11432) and Continuum of Care grantees;

(xii) Medicaid and the State children's health insurance programs (42 U.S.C. 1396 *et seq.*, 1397aa *et seq.*);

(xiii) Mental health services; and

(xiv) Child care resources and referral agencies, child care consumer education organizations, and providers of early childhood education training and professional development.

* * * * *

(3) If the Lead Agency elects to combine funding for CCDF services with any other early childhood program, provide a description in the CCDF Plan of how the Lead Agency will combine and use the funding.

(4) Demonstrate in the CCDF Plan how the State, Territory, or Tribe encourages partnerships among its agencies, other public agencies, Indian Tribes and Tribal organizations, and private entities, including faith-based and community-based organizations, to leverage existing service delivery systems for child care and development services and to increase the supply and quality of child care and development services and to increase the supply and quality of child care services for children who are less than 13 years of age, such as by implementing voluntary shared service alliance models.

* * * * *

(c) * * *

(3) In advance of the hearing required by this section, the Lead Agency shall make available to the public the content of the Plan as described in § 98.16 that it proposes to submit to the Secretary, which shall include posting the Plan content on a Web site.

(d) Make the submitted and final Plan, any Plan amendments, and any approved requests for temporary relief (in accordance with § 98.19) publicly available on a Web site.

■ 8. Amend § 98.15 as follows:

■ a. Revise paragraph (a)(6);

■ b. Add paragraphs (a)(7) through (11); and

■ c. Revise paragraph (b).

The revisions and additions read as follows:

§ 98.15 Assurances and certifications.

(a) * * *

(6) That if expenditures for pre-Kindergarten services are used to meet the maintenance-of-effort requirement, the State has not reduced its level of effort in full-day/full-year child care services, pursuant to § 98.55(h)(1).

(7) Training and professional development requirements comply with § 98.44 and are applicable to caregivers, teaching staff, and directors working for child care providers of services for which assistance is provided under the CCDF.

(8) To the extent practicable, enrollment and eligibility policies support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences in accordance with § 98.45(l).

(9) The State will maintain or implement early learning and developmental guidelines that are developmentally appropriate for all children from birth to kindergarten entry, describing what such children should know and be able to do, and covering the essential domains of early childhood development (cognition, including language arts and mathematics; social, emotional and physical development; and approaches toward learning) for use statewide by child care providers and caregivers. Such guidelines shall—

(i) Be research-based and developmentally, culturally, and linguistically appropriate, building in a forward progression, and aligned with entry to kindergarten;

(ii) Be implemented in consultation with the State educational agency and the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(I)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)) or similar coordinating body, and in consultation with child development and content experts; and

(iii) Be updated as determined by the State.

(10) Funds received by the State to carry out this subchapter will not be used to develop or implement an assessment for children that—

(i) Will be the primary or sole basis for a child care provider being determined to be ineligible to participate in the program carried out under this subchapter;

(ii) Will be used as the primary or sole basis to provide a reward or sanction for an individual provider;

(iii) Will be used as the primary or sole method for assessing program effectiveness; or

(iv) Will be used to deny children eligibility to participate in the program carried out under this subchapter.

(11) To the extent practicable and appropriate, any code or software for child care information systems or information technology that a Lead Agency or other agency expends CCDF funds to develop must be made available upon request to other public agencies, including public agencies in other States, for their use in administering child care or related programs.

(b) The Lead Agency shall include the following certifications in its CCDF Plan:

(1) The State has developed the CCDF Plan in consultation with the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(I)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body, pursuant to § 98.14(a)(1)(vii);

(2) In accordance with § 98.31, the Lead Agency has procedures in place to ensure that providers of child care services for which assistance is provided under the CCDF, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations and whenever such children are in the care of such providers;

(3) As required by § 98.32, the State maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public on request;

(4) It will collect and disseminate to parents of eligible children, the general public and, where applicable, child care providers, consumer education information that will promote informed child care choices, information on access to other programs for which families may be eligible, and information on developmental screenings, as required by § 98.33;

(5) In accordance with § 98.33(a), that the State makes public, through a consumer-friendly and easily accessible Web site, the results of monitoring and inspection reports, as well as the number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings;

(6) There are in effect licensing requirements applicable to child care services provided within the State, pursuant to § 98.40;

(7) There are in effect within the State (or other area served by the Lead Agency), under State or local (or tribal) law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the CCDF, pursuant to § 98.41;

(8) In accordance with § 98.42(a), procedures are in effect to ensure that child care providers of services for which assistance is provided under the CCDF comply with all applicable State or local (or tribal) health and safety requirements;

(9) Caregivers, teachers, and directors of child care providers comply with the State's, Territory's, or Tribe's procedures for reporting child abuse and neglect as required by section 106(b)(2)(B)(i) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)), if applicable, or other child abuse reporting procedures and laws in the service area, as required by § 98.41(e);

(10) There are in effect monitoring policies and practices pursuant to § 98.42;

(11) Payment rates for the provision of child care services, in accordance with § 98.45, are sufficient to ensure equal access for eligible children to comparable child care services in the State or sub-State area that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State child care assistance programs;

(12) Payment practices of child care providers of services for which assistance is provided under the CCDF reflect generally-accepted payment practices of child care providers that serve children who do not receive CCDF assistance, pursuant to § 98.45(l); and

(13) There are in effect policies to govern the use and disclosure of confidential and personally identifiable information about children and families receiving CCDF assistance and child care providers receiving CCDF funds.

■ 9. Revise § 98.16 to read as follows:

§ 98.16 Plan provisions.

A CCDF Plan shall contain the following:

(a) Specification of the Lead Agency whose duties and responsibilities are delineated in § 98.10;

(b) A description of processes the Lead Agency will use to monitor administrative and implementation responsibilities undertaken by agencies other than the Lead Agency including descriptions of written agreements, monitoring and auditing procedures, and indicators or measures to assess performance pursuant to § 98.11(a)(3);

(c) The assurances and certifications listed under § 98.15;

(d)(1) A description of how the CCDF program will be administered and implemented, if the Lead Agency does not directly administer and implement the program;

(2) Identification of the public or private entities designated to receive private donated funds and the purposes for which such funds will be expended, pursuant to § 98.55(f);

(e) A description of the coordination and consultation processes involved in the development of the Plan and the provision of services, including a description of public-private partnership activities that promote business involvement in meeting child care needs pursuant to § 98.14;

(f) A description of the public hearing process, pursuant to § 98.14(c);

(g) Definitions of the following terms for purposes of determining eligibility, pursuant to §§ 98.20(a) and 98.46:

(1) Special needs child;

(2) Physical or mental incapacity (if applicable);

(3) Attending (a job training or educational program);

(4) Job training and educational program;

(5) Residing with;

(6) Working;

(7) Protective services (if applicable), including whether children in foster care are considered in protective services for purposes of child care eligibility; and whether respite care is provided to custodial parents of children in protective services.

(8) Very low income; and

(9) In loco parentis;

(h) A description and demonstration of eligibility determination and redetermination processes to promote continuity of care for children and stability for families receiving CCDF services, including:

(1) An eligibility redetermination period of no less than 12 months in accordance with § 98.21(a);

(2) A graduated phase-out for families whose income exceeds the Lead Agency's threshold to initially qualify for CCDF assistance, but does not exceed 85 percent of State median income, pursuant to § 98.21(b);

(3) Processes that take into account irregular fluctuation in earnings, pursuant to § 98.21(c);

(4) Procedures and policies to ensure that parents are not required to unduly disrupt their education, training, or employment to complete eligibility redetermination, pursuant to § 98.21(d);

(5) Limiting any requirements to report changes in circumstances in accordance with § 98.21(e);

(6) Policies that take into account children's development and learning when authorizing child care services pursuant to § 98.21(f); and

(7) Other policies and practices such as timely eligibility determination and processing of applications;

(i) For child care services pursuant to § 98.50:

(1) A description of such services and activities;

(2) Any limits established for the provision of in-home care and the reasons for such limits pursuant to § 98.30(e)(1)(iii);

(3) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available throughout the entire service area;

(4) A description of how the Lead Agency will meet the needs of certain families specified at § 98.50(e);

(5) Any eligibility criteria, priority rules, and definitions established pursuant to §§ 98.20 and 98.46;

(j) A description of the activities to provide comprehensive consumer and provider education, including the posting of monitoring and inspection reports, pursuant to § 98.33, to increase parental choice, and to improve the quality of child care, pursuant to § 98.53;

(k) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost-sharing by the families that receive child care services for which assistance is provided under the CCDF and how co-payments are affordable for families, pursuant to § 98.45(k). This shall include a description of the criteria established by the Lead Agency, if any, for waiving contributions for families;

(l) A description of the health and safety requirements, applicable to all providers of child care services for which assistance is provided under the CCDF, in effect pursuant to § 98.41, and any exemptions to those requirements for relative providers made in accordance with § 98.42(c);

(m) A description of child care standards for child care providers of services for which assistance is provided under the CCDF, in accordance with § 98.41(d), that includes group size limits, child-staff ratios, and required qualifications for caregivers, teachers, and directors;

(n) A description of monitoring and other enforcement procedures in effect to ensure that child care providers comply with applicable health and safety requirements pursuant to § 98.42;

(o) A description of criminal background check requirements, policies, and procedures in accordance with § 98.43, including a description of the requirements, policies, and procedures in place to respond to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe;

(p) A description of training and professional development requirements for caregivers, teaching staff, and directors of providers of services for which assistance is provided in accordance with § 98.44;

(q) A description of the child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);

(r) Payment rates and a summary of the facts, including a local market rate survey or alternative methodology relied upon to determine that the rates provided are sufficient to ensure equal access pursuant to § 98.45;

(s) A detailed description of the State's hotline for complaints, its process for substantiating and responding to complaints, whether or not the State uses monitoring as part of its process for responding to complaints for both CCDF and non-CCDF providers, how the State maintains a record of substantiated parental complaints, and how it makes information regarding those complaints available to the public on request, pursuant to § 98.32;

(t) A detailed description of the procedures in effect for affording parents unlimited access to their children whenever their children are in the care of the provider, pursuant to § 98.31;

(u) A detailed description of the licensing requirements applicable to child care services provided, any exemption to licensing requirements that is applicable to child care providers of services for which assistance is provided under the CCDF and a demonstration of why such exemption does not endanger the health, safety, or development of children, and a description of how such licensing requirements are effectively enforced, pursuant to § 98.40;

(v) Pursuant to § 98.33(f), the definitions or criteria used to implement the exception, provided in section 407(e)(2) of the Social Security Act (42 U.S.C. 607(e)(2)), to individual penalties in the TANF work requirement applicable to a single custodial parent caring for a child under age six;

(w)(1) When any Matching funds under § 98.55(b) are claimed, a description of the efforts to ensure that pre-Kindergarten programs meet the needs of working parents;

(2) When State pre-Kindergarten expenditures are used to meet more than 10% of the amount required at § 98.55(c)(1), or for more than 10% of the funds available at § 98.55(b), or both, a description of how the State will coordinate its pre-Kindergarten and child care services to expand the availability of child care;

(x) A description of the Lead Agency's strategies (which may include alternative payment rates to child care providers, the provision of direct grants or contracts, offering child care certificates, or other means) to increase the supply and improve the quality of child care services for children in underserved areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and children who receive care during nontraditional hours, including whether the Lead Agency plans to use grants and contracts in building supply and how supply-building mechanisms will address the needs identified. The description must identify shortages in the supply of high-quality child care providers, list the data sources used to identify shortages, and describe the method of tracking progress to support equal access and parental choice. If the Lead Agency employs grants and contracts to meet the purposes of this section, the Lead Agency must provide CCDF families the option to choose a certificate for the purposes of acquiring care;

(y) A description of how the Lead Agency prioritizes increasing access to high-quality child care and development services for children of families in areas that have significant concentrations of poverty and unemployment and that do not have sufficient numbers of such programs, pursuant to § 98.46;

(z) A description of how the Lead Agency develops and implements strategies to strengthen the business practices of child care providers to expand the supply, and improve the quality of, child care services;

(aa) A demonstration of how the State, Territory or Tribe will address the needs of children, including the need for safe child care, before, during and after a state of emergency declared by the Governor or a major disaster or emergency (as defined by section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5122) through a Statewide Disaster Plan (or Disaster Plan for a Tribe's service area) that:

(1) For a State, is developed in collaboration with the State human services agency, the State emergency management agency, the State licensing agency, the State health department or public health department, local and State child care resource and referral agencies, and the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(I)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body; and

(2) Includes the following components:

(i) Guidelines for continuation of child care subsidies and child care services, which may include the provision of emergency and temporary child care services during a disaster, and temporary operating standards for child care after a disaster;

(ii) Coordination of post-disaster recovery of child care services; and

(iii) Requirements that child care providers of services for which assistance is provided under the CCDF, as well as other child care providers as determined appropriate by the State, Territory or Tribe, have in place:

(A) Procedures for evacuation, relocation, shelter-in-place, lock-down, communication and reunification with families, continuity of operations, accommodations of infants and toddlers, children with disabilities, and children with chronic medical conditions; and

(B) Procedures for staff and volunteer emergency preparedness training and practice drills, including training requirements for child care providers of services for which assistance is provided under CCDF at § 98.41(a)(1)(vii);

(bb) A description of payment practices applicable to providers of child care services for which assistance is provided under this part, pursuant to § 98.45(l), including practices to ensure timely payment for services, to delink provider payments from children's occasional absences to the extent practicable, and to reflect generally-accepted payment practices;

(cc) A description of internal controls to ensure integrity and accountability, processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud, and procedures in place to document and verity eligibility, pursuant to § 98.68;

(dd) A description of how the Lead Agency will provide outreach and services to eligible families with limited

English proficiency and persons with disabilities and facilitate participation of child care providers with limited English proficiency and disabilities in the subsidy system;

(ee) A description of policies to prevent suspension, expulsion, and denial of services due to behavior of children birth to age five in child care and other early childhood programs receiving assistance under this part, which must be disseminated as part of consumer and provider education efforts in accordance with § 98.33(b)(1)(v);

(ff) Designation of a State, territorial, or tribal entity to which child care providers must submit reports of any serious injuries or deaths of children occurring in child care, in accordance with § 98.42(b)(4);

(gg) A description of how the Lead Agency will support child care providers in the successful engagement of families in children's learning and development;

(hh) A description of how the Lead Agency will respond to complaints submitted through the national hotline and Web site, required in section 658L(b) of the CCDBG Act of 2014 (42 U.S.C. 9858j(b)), including the designee responsible for receiving and responding to such complaints regarding both licensed and license-exempt child care providers;

(ii) Such other information as specified by the Secretary.

■ 10. In § 98.17, revise paragraph (a) to read as follows:

§ 98.17 Period covered by Plan.

(a) For States, Territories, and Indian Tribes the Plan shall cover a period of three years.

* * * * *

■ 11. In § 98.18, revise paragraph (b) to read as follows:

§ 98.18 Approval and disapproval of Plans and Plan amendments.

* * * * *

(b) *Plan amendments.* (1) Approved Plans shall be amended whenever a substantial change in the program occurs. A Plan amendment shall be submitted within 60 days of the effective date of the change. Plan amendments will be approved or denied not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.

(2) Lead Agencies must ensure advanced written notice is provided to affected parties (*i.e.*, parents and child care providers) of substantial changes in the program that adversely affect eligibility, payment rates, and/or sliding fee scales.

* * * * *

■ 12. Add § 98.19 to subpart B to read as follows:

§ 98.19 Requests for temporary relief from requirements.

(a) *Requests for relief.* The Secretary may temporarily waive one or more of the requirements contained in the Act or this part, with the exception of State Match and Maintenance of Effort requirements for a State, consistent with the conditions described in section 658I(c)(1) of the Act (42 U.S.C. 9858g(c)(1)), provided that the waiver request:

(1) Describes circumstances that prevent the State, Territory, or Tribe from complying with any statutory or regulatory requirements of this part;

(2) By itself, contributes to or enhances the State's, Territory's, or Tribe's ability to carry out the purposes of the Act and this part;

(3) Will not contribute to inconsistency with the purposes of the Act or this part, and;

(4) Meets the requirements set forth in paragraphs (b) through (g) of this section.

(b) *Types.* Types of waivers include:

(1) *Transitional and legislative waivers.* Lead Agencies may apply for temporary waivers meeting the requirements described in paragraph (a) of this section that would provide transitional relief from conflicting or duplicative requirements preventing implementation, or an extended period of time in order for a State, territorial, or tribal legislature to enact legislation to implement the provisions of this subchapter. Such waivers are:

(i) Limited to a one-year initial period;

(ii) May be extended, in accordance with paragraph (f) of this section, for at most one additional year from the date of approval of the extension,

(iii) Are designed to provide States, Territories and Tribes at most one full legislative session to enact legislation to implement the provisions of the Act or this part, and;

(iv) Are conditional, dependent on progress towards implementation, and may be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

(2) *Waivers for extraordinary circumstances.* States, Territories and Tribes may apply for waivers meeting the requirements described in paragraph (a) of this section, in cases of extraordinary circumstances, which are defined as temporary circumstances or situations, such as a natural disaster or financial crisis. Such waivers are:

(i) Limited to an initial period of no more than 2 years from the date of approval;

(ii) May be extended, in accordance with paragraph (f) of this section, for at most one additional year from the date of approval of the extension, and;

(iii) May be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

(c) *Contents.* Waiver requests must be submitted to the Secretary in writing and:

(1) Indicate which type of waiver, as detailed in paragraph (b) of this section, the State, Territory or Tribe is requesting;

(2) Detail each sanction or provision of the Act or regulations that the State, Territory or Tribe seeks relief from;

(3) Describe how a waiver from that sanction or provision will, by itself, improve delivery of child care services for children; and

(4) Certify and describe how the health, safety, and well-being of children served through assistance received under this part will not be compromised as a result of the waiver.

(d) *Notification.* Within 90 days after receipt of the waiver request or, if additional follow up information has been requested, the receipt of such information, the Secretary will notify the Lead Agency of the approval or disapproval of the request.

(e) *Termination.* The Secretary shall terminate approval of a request for a waiver authorized under the Act or this section if the Secretary determines, after notice and opportunity for a hearing based on the rules of procedure in part 99 of this chapter, that the performance of a State, Territory or Tribe granted relief under this section has been inadequate, or if such relief is no longer necessary to achieve its original purposes.

(f) *Renewal.* The Secretary may approve or disapprove a request from a State, Territory or Tribe for renewal of an existing waiver under the Act or this section for a period no longer than one year. A State, Territory or Tribe seeking to renew their waiver approval must inform the Secretary of this intent no later than 30 days prior to the expiration date of the waiver. The State, Territory or Tribe shall re-certify in its extension request the provisions in paragraph (a) of this section, and shall also explain the need for additional time of relief from such sanction(s) or provisions.

(g) *Restrictions.* The Secretary may not:

(1) Permit Lead Agencies to alter the federal eligibility requirements for eligible children, including work requirements, job training, or

educational program participation, that apply to the parents of eligible children under this part;

(2) Waive anything related to the Secretary's authority under this part; or

(3) Require or impose any new or additional requirements in exchange for receipt of a waiver if such requirements are not specified in the Act.

■ 13. Amend § 98.20 as follows:

■ a. Revise paragraphs (a) introductory text, (a)(2) and (3), and (b) introductory text;

■ b. In paragraph (b)(2), remove "Subpart D; or" and add in its place "subpart D of this part;";

■ c. In paragraph (b)(3):

■ i. Remove "§ 98.44" and add "§ 98.46" in its place; and

■ ii. Remove the period at the end of the paragraph and add "; or" in its place; and

■ d. Add paragraphs (b)(4) and (c).

The revisions and additions read as follows:

§ 98.20 A child's eligibility for child care services.

(a) To be eligible for services under § 98.50, a child shall, at the time of eligibility determination or redetermination:

* * * * *

(2)(i) Reside with a family whose income does not exceed 85 percent of the State's median income (SMI), which must be based on the most recent SMI data that is published by the Bureau of the Census, for a family of the same size; and

(ii) Whose family assets do not exceed $1,000,000 (as certified by such family member); and (3)(i) Reside with a parent or parents who are working or attending a job training or educational program; or

(ii) Receive, or need to receive, protective services, which may include specific populations of vulnerable children as identified by the Lead Agency, and reside with a parent or parents other than the parent(s) described in paragraph (a)(3)(i) of this section.

(A) At grantee option, the requirements in paragraph (a)(2) of this section may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis.

(B) At grantee option, the waiver provisions in paragraph (a)(3)(ii)(A) of this section apply to children in foster care when defined in the Plan, pursuant to § 98.16(g)(7).

(b) A grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.46, which shall be described in the Plan pursuant to § 98.16(i)(5), so long as they do not:

* * * * *

(4) Impact eligibility other than at the time of eligibility determination or redetermination.

(c) For purposes of implementing the citizenship eligibility verification requirements mandated by title IV of the Personal Responsibility and Work Opportunity Reconciliation Act, 8 U.S.C. 1601 *et seq.*, only the citizenship and immigration status of the child, who is the primary beneficiary of the CCDF benefit, is relevant. Therefore, a Lead Agency or other administering agency may not condition a child's eligibility for services under § 98.50 based upon the citizenship or immigration status of their parent or the provision of any information about the citizenship or immigration status of their parent.

■ 14. Add § 98.21 to subpart C to read as follows:

§ 98.21 Eligibility determination processes.

(a) A Lead Agency shall re-determine a child's eligibility for child care services no sooner than 12 months following the initial determination or most recent redetermination, subject to the following:

(1) During the period of time between determinations or redeterminations, if the child met all of the requirements in § 98.20(a) on the date of the most recent eligibility determination or redetermination, the child shall be considered eligible and will receive services at least at the same level, regardless of:

(i) A change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or

(ii) A temporary change in the ongoing status of the child's parent as working or attending a job training or educational program. A temporary change shall include, at a minimum:

(A) Any time-limited absence from work for an employed parent due to reasons such as need to care for a family member or an illness;;

(B) Any interruption in work for a seasonal worker who is not working between regular industry work seasons;

(C) Any student holiday or break for a parent participating in training or education;

(D) Any reduction in work, training or education hours, as long as the parent is still working or attending training or education;

(E) Any other cessation of work or attendance at a training or education program that does not exceed three months or a longer period of time established by the Lead Agency;

(F) Any change in age, including turning 13 years old during the eligibility period; and

(G) Any change in residency within the State, Territory, or Tribal service area.

(2)(i) Lead Agencies have the option, but are not required, to discontinue assistance due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with paragraph (a)(1)(ii) of this section. However, if the Lead Agency exercises this option, it must continue assistance at least at the same level for a period of not less than three months after each such loss or cessation in order for the parent to engage in job search and resume work, or resume attendance at a job training or educational activity.

(ii) At the end of the minimum three-month period of continued assistance, if the parent is engaged in a qualifying work, education, or training activity with income below 85% of SMI, assistance cannot be terminated and the child must continue receiving assistance until the next scheduled re-determination, or at Lead Agency option, for an additional minimum 12—month eligibility period.

(iii) If a Lead Agency chooses to initially qualify a family for CCDF assistance based a parent's status of seeking employment or engaging in job search, the Lead Agency has the option to end assistance after a minimum of three months if the parent has still not found employment, although assistance must continue if the parent becomes employed during the job search period.

(3) Lead Agencies cannot increase family co-payment amounts, established in accordance with § 98.45(k), within the minimum 12-month eligibility period except as described in paragraph (b)(3) of this section.

(4) Because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible between redeterminations as described in paragraph (a)(1) of this section, any payment for such a child shall not be considered an error or improper payment under subpart K of this part due to a change in the family's circumstances.

(5) Notwithstanding paragraph (a)(1), the Lead Agency may discontinue assistance prior to the next re-determination in limited circumstances where there have been:

(i) Excessive unexplained absences despite multiple attempts by the Lead Agency or designated entity to contact the family and provider, including prior notification of possible discontinuation of assistance;

(A) If the Lead Agency chooses this option, it shall define the number of unexplained absences that shall be considered excessive;

(ii) A change in residency outside of the State, Territory, or Tribal service area; or

(iii) Substantiated fraud or intentional program violations that invalidate prior determinations of eligibility.

(b)(1) Lead Agencies that establish family income eligibility at a level less than 85 percent of SMI for a family of the same size (in order for a child to initially qualify for assistance) must provide a graduated phase-out by implementing two-tiered eligibility thresholds, with the second tier of eligibility (used at the time of eligibility re-determination) set at:

(i) 85 percent of SMI for a family of the same size; or

(ii) An amount lower than 85 percent of SMI for a family of the same size, but above the Lead Agency's initial eligibility threshold, that:

(A) Takes into account the typical household budget of a low income family; and

(B) Provides justification that the second eligibility threshold is:

(*1*) Sufficient to accommodate increases in family income over time that are typical for low-income workers and that promote and support family economic stability; and

(*2*) Reasonably allows a family to continue accessing child care services without unnecessary disruption.

(2) At re-determination, a child shall be considered eligible (pursuant to paragraph (a) of this section) if their parents, at the time of redetermination, are working or attending a job training or educational program even if their income exceeds the Lead Agency's income limit to initially quality for assistance, as long as their income does not exceed the second tier of the eligibility described in (b)(1);

(3) A family meeting the conditions described in (b)(2) shall be eligible for services pursuant to the conditions described in § 98.20 and all other paragraphs of § 98.21, with the exception of the co-payment restrictions at § 98.21(a)(3). To help families transition off of child care assistance, Lead Agencies may gradually adjust co-pay amounts for families whose children are determined eligible under the graduate phase-out conditions described in paragraph (b)(2) and may require additional reporting on changes in family income as described in paragraph (e)(3) of this section, provided such requirements do not constitute an undue burden, pursuant to conditions described in (e)(2)(ii) and (iii) of this section.

(c) The Lead Agency shall establish processes for initial determination and redetermination of eligibility that take into account irregular fluctuation in earnings, including policies that ensure temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments.

(d) The Lead Agency shall establish procedures and policies to ensure parents, especially parents receiving assistance through the Temporary Assistance for Needy Families (TANF) program, are not required to unduly disrupt their education, training, or employment in order to complete the eligibility redetermination process.

(e) The Lead Agency shall specify in the Plan any requirements for parents to notify the Lead Agency of changes in circumstances during the minimum 12-month eligibility period, and describe efforts to ensure such requirements do not place an undue burden on eligible families that could impact continued eligibility between redeterminations.

(1) The Lead Agency must require families to report a change at any point during the minimum 12-month period, limited to:

(i) If the family's income exceeds 85% of SMI, taking into account irregular income fluctuations; or

(ii) At the option of the Lead Agency, the family has experienced a non-temporary cessation of work, training, or education.

(2) Any additional requirements the Lead Agency chooses, at its option, to impose on parents to provide notification of changes in circumstances to the Lead Agency or entities designated to perform eligibility functions shall not constitute an undue burden on families. Any such requirements shall:

(i) Limit notification requirements to items that impact a family's eligibility (*e.g.*, only if income exceeds 85 percent of SMI, or there is a non-temporary change in the status of the child's parent as working or attending a job training or educational program) or those that enable the Lead Agency to contact the family or pay providers;

(ii) Not require an office visit in order to fulfill notification requirements; and

(iii) Offer a range of notification options (*e.g.*, phone, email, online forms, extended submission hours) to accommodate the needs of parents;

(3) During a period of graduated phase-out, the Lead Agency may require additional reporting on changes in family income in order to gradually adjust family co-payments, if desired, as described in paragraph (b)(3) of this section.

(4) Lead Agencies must allow families the option to voluntarily report changes on an ongoing basis.

(i) Lead Agencies are required to act on this information provided by the family if it would reduce the family's co-payment or increase the family's subsidy.

(ii) Lead Agencies are prohibited from acting on information that would reduce the family's subsidy unless the information provided indicates the family's income exceeds 85 percent of SMI for a family of the same size, taking into account irregular income fluctuations, or, at the option of the Lead Agency, the family has experienced a non-temporary change in the work, training, or educational status.

(f) Lead Agencies must take into consideration children's development and learning and promote continuity of care when authorizing child care services.

(g) Lead Agencies are not required to limit authorized child care services strictly based on the work, training, or educational schedule of the parent(s) or the number of hours the parent(s) spend in work, training, or educational activities.

■ 15. In § 98.30, revise paragraphs (e)(1), (f) introductory text, and (f)(2) and add paragraphs (g) and (h) to read as follows:

§ 98.30 Parental choice.

* * * * *

(e)(1) For child care services, certificates under paragraph (a)(2) of this section shall permit parents to choose from a variety of child care categories, including:

(i) Center-based child care;

(ii) Family child care; and

(iii) In-home child care, with limitations, if any, imposed by the Lead Agency and described in its Plan at § 98.16(i)(2). Under each of the above categories, care by a sectarian provider may not be limited or excluded.

* * * * *

(f) With respect to State and local regulatory requirements under § 98.40, health and safety requirements under § 98.41, and payment rates under § 98.45, CCDF funds will not be available to a Lead Agency if State or local rules, procedures or other requirements promulgated for purposes

of the CCDF significantly restrict parental choice by:

* * * * *

(2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in § 98.2, with the exception of in-home care; or

* * * * *

(g) As long as provisions at paragraph (f) of this section are met, parental choice provisions shall not be construed as prohibiting a Lead Agency from establishing policies that require providers of child care services for which assistance is provided under this part to meet higher standards of quality, such as those identified in a quality rating and improvement system or other transparent system of quality indicators.

(h) Parental choice provisions shall not be construed as prohibiting a Lead Agency from providing parents with information and incentives that encourage the selection of high-quality child care.

■ 16. Revise § 98.31 to read as follows:

§ 98.31 Parental access.

The Lead Agency shall have in effect procedures to ensure that providers of child care services for which assistance is provided afford parents unlimited access to their children, and to the providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider. The Lead Agency shall provide a detailed description in the Plan of such procedures.

■ 17. Revise § 98.32 to read as follows:

§ 98.32 Parental complaints.

The State shall:

(a) Establish or designate a hotline or similar reporting process for parents to submit complaints about child care providers;

(b) Maintain a record of substantiated parent complains;

(c) Make information regarding such parental complaints available to the public on request; and

(d) The Lead Agency shall provide a detailed description in the Plan of how:

(1) Complaints are substantiated and responded to, including whether or not the State uses monitoring as part of its process for responding to complaints for both CCDF and non-CCDF providers; and,

(2) A record of substantiated complaints is maintained and is made available.

■ 18. Revise § 98.33 to read as follows:

§ 98.33 Consumer and provider education.

The Lead Agency shall:

(a) Certify that it will collect and disseminate consumer education information to parents of eligible children, the general public, and providers through a consumer-friendly and easily accessible Web site that ensures the widest possible access to services for families who speak languages other than English and persons with disabilities, including:

(1) Lead Agency processes, including:

(i) The process for licensing child care providers pursuant to § 98.40;

(ii) The process for conducting monitoring and inspections of child care providers pursuant to § 98.42;

(iii) Policies and procedures related to criminal background checks for child care providers pursuant to § 98.43; and

(iv) The offenses that prevent individuals from serving as child care providers.

(2) A localized list of all licensed child care providers, and, at the discretion of the Lead Agency, all eligible child care providers (other than an individual who is related to all children for whom child care services are provided), differentiating between licensed and license-exempt providers, searchable by zip code;

(3) The quality of a provider as determined by the Lead Agency through a quality rating and improvement system or other transparent system of quality indicators, if such information is available for the provider;

(4) Results of monitoring and inspection reports for all eligible and licensed child care providers (other than an individual who is related to all children for whom child care services are provided), including those required at § 98.42 and those due to major substantiated complaints about failure to comply with provisions at § 98.41 and Lead Agency child care policies. Lead Agencies shall post in a timely manner full monitoring and inspection reports, either in plain language or with a plain language summary, for parents and child care providers to understand, and shall establish a process for correcting inaccuracies in the reports. Such results shall include:

(i) Information on the date of such inspection;

(ii) Information on corrective action taken by the State and child care provider, where applicable;

(iii) Any health and safety violations, including any fatalities and serious injuries occurring at the provider, prominently displayed on the report or summary; and

(iv) A minimum of 3 years of results where available.

(5) Aggregate number of deaths and serious injuries (for each provider category and licensing status) and instances of substantiated child abuse that occurred in child care settings each year, for eligible providers.

(6) Referrals to local child care resource and referral organizations.

(7) Directions on how parents can contact the Lead Agency or its designee and other programs to help them understand information included on the Web site.

(b) Certify that it will collect and disseminate, through resource and referral organizations or other means as determined by the State, including, but not limited to, through the Web site described in paragraph (a) of this section, to parents of eligible children and the general public, and where applicable providers, information about:

(1) The availability of the full diversity of child care services to promote informed parental choice, including information about:

(i) The availability of child care services under this part and other programs for which families may be eligible, as well as the availability of financial assistance to obtain child care services;

(ii) Other programs for which families that receive assistance under this part may be eligible, including:

(A) Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601 *et seq.*);

(B) Head Start and Early Head Start (42 U.S.C. 9831 *et seq.*);

(C) Low-Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. 8621 *et seq.*);

(D) Supplemental Nutrition Assistance Program (SNAP) (7 U.S.C. 2011 *et seq.*);

(E) Special supplemental nutrition program for women, infants, and children (42 U.S.C. 1786);

(F) Child and Adult Care Food Program (CACFP) (42 U.S.C. 1766);

(G) Medicaid and the State children's health insurance programs (42 U.S.C. 1396 *et seq.*, 1397aa *et seq.*);

(iii) Programs carried out under section 619 and part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1419, 1431 *et seq.*);

(iv) Research and best practices concerning children's development, meaningful parent and family engagement, and physical health and development, particularly healthy eating and physical activity; and

(v) State policies regarding social emotional behavioral health of children which may include positive behavioral health intervention and support models for birth to school-age or age-appropriate, and policies to prevent suspension and expulsion of children

birth to age five in child care and other early childhood programs, as described in the Plan pursuant to § 98.16(ee), receiving assistance under this part.

(c) Provide information on developmental screenings to parents as part of the intake process for families receiving assistance under this part, and to providers through training and education, including:

(1) Information on existing resources and services the State can make available in conducting developmental screenings and providing referrals to services when appropriate for children who receive assistance under this part, including the coordinated use of the Early and Periodic Screening, Diagnosis, and Treatment program (42 U.S.C. 1396 *et seq.*) and developmental screening services available under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 *et seq.*); and

(2) A description of how a family or eligible child care provider may utilize the resources and services described in paragraph (c)(1) of this section to obtain developmental screenings for children who receive assistance under this part who may be at risk for cognitive or other developmental delays, which may include social, emotional, physical, or linguistic delays.

(d) For families that receive assistance under this part, provide specific information about the child care provider selected by the parent, including health and safety requirements met by the provider pursuant to § 98.41, any licensing or regulatory requirements met by the provider, date the provider was last inspected, any history of violations of these requirements, and any voluntary quality standards met by the provider. Information must also describe how CCDF subsidies are designed to promote equal access in accordance with § 98.45, how to submit a complaint through the hotline at § 98.32(a), and how to contact local resource and referral agencies or other community-based supports that assist parents in finding and enrolling in quality child care.

(e) Provide linkages to databases related to paragraph (a) to HHS for implementing a national Web site and other uses as determined by the Secretary.

(f) Inform parents who receive TANF benefits about the requirement at section 407(e)(2) of the Social Security Act (42 U.S.C. 607(e)(2)) that the TANF agency make an exception to the individual penalties associated with the work requirement for any single custodial parent who has a demonstrated inability to obtain needed child care for a child under six years of age. The information may be provided directly by the Lead Agency, or, pursuant to § 98.11, other entities, and shall include:

(1) The procedures the TANF agency uses to determine if the parent has a demonstrated inability to obtain needed child care;

(2) The criteria or definitions applied by the TANF agency to determine whether the parent has a demonstrated inability to obtain needed child care, including:

(i) "Appropriate child care";

(ii) "Reasonable distance";

(iii) "Unsuitability of informal child care";

(iv) "Affordable child care arrangements";

(3) The clarification that assistance received during the time an eligible parent receives the exception referred to in paragraph (f) of this section will count toward the time limit on Federal benefits required at section 408(a)(7) of the Social Security Act (42 U.S.C. 608(a)(7)).

(g) Include in the triennial Plan the definitions or criteria the TANF agency uses in implementing the exception to the work requirement specified in paragraph (f) of this section.

■ 19. In § 98.40, redesignate paragraph (a)(2) as (a)(3), revise newly redesignated paragraph (a)(3), and add new paragraph (a)(2).

The addition and revision read as follows:

§ 98.40 Compliance with applicable State and local regulatory requirements.

(a) * * *

(2) Describe in the Plan exemption(s) to licensing requirements, if any, for child care services for which assistance is provided, and a demonstration for how such exemption(s) do not endanger the health, safety, or development of children who receive services from such providers. Lead Agencies must provide the required description and demonstration for any exemptions based on:

(i) Provider category, type, or setting;

(ii) Length of day;

(iii) Providers not subject to licensing because the number of children served falls below a State-defined threshold; and

(iv) Any other exemption to licensing requirements; and

(3) Provide a detailed description in the Plan of the requirements under paragraph (a)(1) of this section and of how they are effectively enforced.

* * * * *

■ 20. Revise § 98.41 to read as follows:

§ 98.41 Health and safety requirements.

(a) Each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements (appropriate to provider setting and age of children served) that are designed, implemented, and enforced to protect the health and safety of children. Such requirements must be applicable to child care providers of services for which assistance is provided under this part. Such requirements, which are subject to monitoring pursuant to § 98.42, shall:

(1) Include health and safety topics consisting of, at a minimum:

(i) The prevention and control of infectious diseases (including immunizations); with respect to immunizations, the following provisions apply:

(A) As part of their health and safety provisions in this area, Lead Agencies shall assure that children receiving services under the CCDF are age-appropriately immunized. Those health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State, territorial, or tribal public health agency.

(B) Notwithstanding this paragraph (a)(1)(i), Lead Agencies may exempt:

(*1*) Children who are cared for by relatives (defined as grandparents, great grandparents, siblings (if living in a separate residence), aunts, and uncles), provided there are no other unrelated children who are cared for in the same setting.

(*2*) Children who receive care in their own homes, provided there are no other unrelated children who are cared for in the home.

(*3*) Children whose parents object to immunization on religious grounds.

(*4*) Children whose medical condition contraindicates immunization.

(C) Lead Agencies shall establish a grace period that allows children experiencing homelessness and children in foster care to receive services under this part while providing their families (including foster families) a reasonable time to take any necessary action to comply with immunization and other health and safety requirements.

(*1*) The length of such grace period shall be established in consultation with the State, Territorial or Tribal health agency.

(*2*) Any payment for such child during the grace period shall not be considered an error or improper payment under subpart K of this part.

(*3*) The Lead Agency may also, at its option, establish grace periods for other

children who are not experiencing homelessness or in foster care.

(4) Lead Agencies must coordinate with licensing agencies and other relevant State, Territorial, Tribal, and local agencies to provide referrals and support to help families of children receiving services during a grace period comply with immunization and other health and safety requirements;

(ii) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(iii) Administration of medication, consistent with standards for parental consent;

(iv) Prevention and response to emergencies due to food and allergic reactions;

(v) Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

(vi) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;

(vii) Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)(1)) that shall include procedures for evacuation, relocation, shelter-in-place and lock down, staff and volunteer emergency preparedness training and practice drills, communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions;

(viii) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

(ix) Appropriate precautions in transporting children, if applicable;

(x) Pediatric first aid and cardiopulmonary resuscitation;

(xi) Recognition and reporting of child abuse and neglect, in accordance with the requirement in paragraph (e) of this section; and

(xii) May include requirements relating to:

(A) Nutrition (including age-appropriate feeding);

(B) Access to physical activity;

(C) Caring for children with special needs; or

(D) Any other subject area determined by the Lead Agency to be necessary to promote child development or to protect children's health and safety.

(2) Include minimum health and safety training on the topics above, as described in § 98.44.

(b) Lead Agencies may not set health and safety standards and requirements other than those required in paragraph (a) of this section that are inconsistent with the parental choice safeguards in § 98.30(f).

(c) The requirements in paragraph (a) of this section shall apply to all providers of child care services for which assistance is provided under this part, within the area served by the Lead Agency, except the relatives specified at § 98.42(c).

(d) Lead Agencies shall describe in the Plan standards for child care services for which assistance is provided under this part, appropriate to strengthening the adult and child relationship in the type of child care setting involved, to provide for the safety and developmental needs of the children served, that address:

(1) Group size limits for specific age populations;

(2) The appropriate ratio between the number of children and the number of caregivers, in terms of age of children in child care; and

(3) Required qualifications for caregivers in child care settings as described at § 98.44(a)(4).

(e) Lead Agencies shall certify that caregivers, teachers, and directors of child care providers within the State or service area will comply with the State's, Territory's, or Tribe's child abuse reporting requirements as required by section 106(b)(2)(B)(i) of the Child Abuse and Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)) or other child abuse reporting procedures and laws in the service area.

■ 21. Revise § 98.42 to read as follows:

§ 98.42 Enforcement of licensing and health and safety requirements.

(a) Each Lead Agency shall certify in the Plan that procedures are in effect to ensure that child care providers of services for which assistance is made available in accordance with this part, within the area served by the Lead Agency, comply with all applicable State, local, or tribal health and safety requirements, including those described in § 98.41.

(b) Each Lead Agency shall certify in the Plan it has monitoring policies and practices applicable to all child care providers and facilities eligible to deliver services for which assistance is provided under this part. The Lead Agency shall:

(1) Ensure individuals who are hired as licensing inspectors are qualified to inspect those child care providers and facilities and have received training in related health and safety requirements appropriate to provider setting and age of children served. Training shall include, but is not limited to, those requirements described in § 98.41, and all aspects of the State, Territory, or Tribe's licensure requirements;

(2) Require inspections of child care providers and facilities, performed by licensing inspectors (or qualified inspectors designated by the Lead Agency), as specified below:

(i) For licensed child care providers and facilities,

(A) Not less than one pre-licensure inspection for compliance with health, safety, and fire standards, and

(B) Not less than annually, an unannounced inspection for compliance with all child care licensing standards, which shall include an inspection for compliance with health and safety, (including, but not limited to, those requirements described in § 98.41) and fire standards (inspectors may inspect for compliance with all three standards at the same time); and

(ii) For license-exempt child care providers and facilities that are eligible to provide services for which assistance is made available in accordance with this part, an annual inspection for compliance with health and safety (including, but not limited to, those requirements described in § 98.41), and fire standards;

(iii) Coordinate, to the extent practicable, monitoring efforts with other Federal, State, and local agencies that conduct similar inspections.

(iv) The Lead Agency may, at its option:

(A) Use differential monitoring or a risk-based approach to design annual inspections, provided that the contents covered during each monitoring visit is representative of the full complement of health and safety requirements;

(B) Develop alternate monitoring requirements for care provided in the child's home that are appropriate to the setting; and

(3) Ensure the ratio of licensing inspectors to such child care providers and facilities is maintained at a level sufficient to enable the State, Territory, or Tribe to conduct effective inspections on a timely basis in accordance with the applicable Federal, State, Territory, Tribal, and local law;

(4) Require child care providers to report to a designated State, Territorial, or Tribal entity any serious injuries or deaths of children occurring in child care.

(c) For the purposes of this section and § 98.41, Lead Agencies may exclude grandparents, great grandparents, siblings (if such providers live in a separate residence), aunts, or uncles,

from the term "child care providers." If the Lead Agency chooses to exclude these providers, the Lead Agency shall provide a description and justification in the CCDF Plan, pursuant to § 98.16(l), of requirements, if any, that apply to these providers.

§§ 98.43 through 98.47 [Redesignated as §§ 98.45 through 98.49]

■ 22. Redesignate §§ 98.43 through 98.47 of subpart E as §§ 98.45 through 98.49.

■ 23. Add new § 98.43 to subpart E to read as follows:

§ 98.43 Criminal background checks.

(a)(1) States, Territories, and Tribes, through coordination of the Lead agency with other State, territorial, and tribal agencies, shall have in effect:

(i) Requirements, policies, and procedures to require and conduct criminal background checks for child care staff members (including prospective child care staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver services for which assistance is provided under this part as described in paragraph (a)(2) of this section;

(ii) Licensing, regulation, and registration requirements, as applicable, that prohibit the employment of child care staff members as described in paragraph (c) of this section; and

(iii) Requirements, policies, and procedures in place to respond as expeditiously as possible to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe required in paragraph (e)(1) of this section.

(2) In this section:

(i) Child care provider means a center based child care provider, a family child care provider, or another provider of child care services for compensation and on a regular basis that:

(A) Is not an individual who is related to all children for whom child care services are provided; and

(B) Is licensed, regulated, or registered under State law or eligible to receive assistance provided under this subchapter; and

(ii) Child care staff member means an individual (other than an individual who is related to all children for whom child care services are provided):

(A) Who is employed by a child care provider for compensation, including contract employees or self-employed individuals;

(B) Whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or

(C) Any individual residing in a family child care home who is age 18 and older.

(b) A criminal background check for a child care staff member under paragraph (a) of this section shall include:

(1) A Federal Bureau of Investigation fingerprint check using Next Generation Identification;

(2) A search of the National Crime Information Center's National Sex Offender Registry; and

(3) A search of the following registries, repositories, or databases in the State where the child care staff member resides and each State where such staff member resided during the preceding five years:

(i) State criminal registry or repository, with the use of fingerprints being:

(A) Required in the State where the staff member resides;

(B) Optional in other States;

(ii) State sex offender registry or repository; and

(iii) State-based child abuse and neglect registry and database.

(c)(1) A child care staff member shall be ineligible for employment by child care providers of services for which assistance is made available in accordance with this part, if such individual:

(i) Refuses to consent to the criminal background check described in paragraph (b) of this section;

(ii) Knowingly makes a materially false statement in connection with such criminal background check;

(iii) Is registered, or is required to be registered, on a State sex offender registry or repository or the National Sex Offender Registry; or

(iv) Has been convicted of a felony consisting of:

(A) Murder, as described in section 1111 of title 18, United States Code;

(B) Child abuse or neglect;

(C) A crime against children, including child pornography;

(D) Spousal abuse;

(E) A crime involving rape or sexual assault;

(F) Kidnapping;

(G) Arson;

(H) Physical assault or battery; or

(I) Subject to paragraph (e)(4) of this section, a drug-related offense committed during the preceding 5 years; or

(v) Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: Child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.

(2) A child care provider described in paragraph (a)(2)(i) of this section shall be ineligible for assistance provided in accordance with this subchapter if the provider employs a staff member who is ineligible for employment under paragraph (c)(1) of this section.

(d)(1) A child care provider covered by paragraph (a)(2)(i) of this section shall submit a request, to the appropriate State, Territorial, or Tribal agency, defined clearly on the State or Territory Web site described in paragraph (g) of this section, for a criminal background check described in paragraph (b) of this section, for each child care staff member (including prospective child care staff members) of the provider.

(2) Subject to paragraph (d)(3) of this section, the provider shall submit such a request:

(i) Prior to the date an individual becomes a child care staff member of the provider; and

(ii) Not less than once during each 5-year period for any existing staff member.

(3) A child care provider shall not be required to submit a request under paragraph (d)(2) of this section for a child care staff member if:

(i) The staff member received a background check described in paragraph (b) of this section:

(A) Within 5 years before the latest date on which such a submission may be made; and

(B) While employed by or seeking employment by another child care provider within the State;

(ii) The State provided to the first provider a qualifying background check result, consistent with this subchapter, for the staff member; and

(iii) The staff member is employed by a child care provider within the State, or has been separated from employment from a child care provider within the State for a period of not more than 180 consecutive days.

(4) A prospective staff member may begin work for a child care provider described in paragraph (a)(2)(i) of this section after completing either the check described at paragraph (b)(1) or (b)(3)(i) of this section in the State where the prospective staff member resides. Pending completion of all background check components in paragraph (b) of this section, the staff member must be supervised at all times by an individual who received a qualifying result on a background check described in paragraph (b) of this section within the past five years.

(e) *Background check results.* (1) The State, Territory, or Tribe shall carry out the request of a child care provider for a criminal background check as expeditiously as possible, but not to exceed 45 days after the date on which the provider submitted the request, and shall provide the results of the criminal background check to such provider and to the current or prospective staff member.

(2) States, Territories, and Tribes shall ensure the privacy of background check results by:

(i) Providing the results of the criminal background check to the provider in a statement that indicates whether a child care staff member (including a prospective child care staff member) is eligible or ineligible for employment described in paragraph (c)(1) of this section, without revealing any disqualifying crime or other related information regarding the individual.

(ii) If the child care staff member is ineligible for such employment due to the background check, the State, Territory, or Tribe will, when providing the results of the background check, include information related to each disqualifying crime, in a report to the staff member or prospective staff member, along with information on the opportunity to appeal, described in paragraph (e)(3) of this section.

(iii) No State, Territory, or Tribe shall publicly release or share the results of individual background checks, except States and Tribes may release aggregated data by crime as listed under paragraph (c)(1)(iv) of this section from background check results, as long as such data is not personally identifiable information.

(3) States, Territories, and Tribes shall provide for a process by which a child care staff member (including a prospective child care staff member) may appeal the results of a criminal background check conducted under this section to challenge the accuracy or completeness of the information contained in such member's criminal background report. The State, Territory, and Tribe shall ensure that:

(i) Each child care staff member is given notice of the opportunity to appeal;

(ii) A child care staff member will receive clear instructions about how to complete the appeals process if the child care staff member wishes to challenge the accuracy or completeness of the information contained in such member's criminal background report;

(iii) If the staff member files an appeal, the State, Territory, or Tribe will attempt to verify the accuracy of the information challenged by the child care staff member, including making an effort to locate any missing disposition information related to the disqualifying crime;

(iv) The appeals process is completed in a timely manner for each child care staff member; and

(v) Each child care staff member shall receive written notice of the decision. In the case of a negative determination, the decision should indicate the State's efforts to verify the accuracy of information challenged by the child care staff member, as well as any additional appeals rights available to the child care staff member.

(4) States, Territories, and Tribes may allow for a review process through which the State, Territory, or Tribe may determine that a child care staff member (including a prospective child care staff member) disqualified for a crime specified in paragraph (c)(1)(iv)(I) of this section is eligible for employment described in paragraph (c)(1) of this section, notwithstanding paragraph (c)(2) of this section. The review process shall be consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*);

(5) Nothing in this section shall be construed to create a private right of action if a provider has acted in accordance with this section.

(f) *Fees for background checks.* Fees that a State, Territory, or Tribe may charge for the costs of processing applications and administering a criminal background check as required by this section shall not exceed the actual costs for the processing and administration.

(g) *Transparency.* The State or Territory must ensure that its policies and procedures under this section, including the process by which a child care provider or other State or Territory may submit a background check request, are published in the Web site of the State or Territory as described in § 98.33(a) and the Web site of local lead agencies.

(h) *Disqualification for other crimes.* (1) Nothing in this section shall be construed to prevent a State, Territory, or Tribe from disqualifying individuals as child care staff members based on their conviction for crimes not specifically listed in paragraph (c)(1) of this section that bear upon the fitness of an individual to provide care for and have responsibility for the safety and well-being of children.

(2) Nothing in this section shall be construed to alter or otherwise affect the rights and remedies provided for child care staff members or prospective staff members residing in a State that disqualifies individuals as child care staff members for crimes not specifically provided for under this section.

■ 24. Add new § 98.44 to subpart E to read as follows:

§ 98.44 Training and professional development.

(a) The Lead Agency must describe in the Plan the State or Territory framework for training, professional development, and postsecondary education for caregivers, teachers, and directors, including those working in school-age care, that:

(1) Is developed in consultation with the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body;

(2) May engage training and professional development providers, including higher education in aligning training and education opportunities with the State's framework;

(3) Addresses professional standards and competencies, career pathways, advisory structure, articulation, and workforce information and financing;

(4) Establishes qualifications in accordance with § 98.41(d)(3) designed to enable child care and school-age care providers that provide services for which assistance is provided in accordance with this part to promote the social, emotional, physical, and cognitive development of children and improve the knowledge and skills of caregivers, teachers and directors in working with children and their families;

(5) Includes professional development conducted on an ongoing basis, providing a progression of professional development (which may include encouraging the pursuit of postsecondary education);

(6) Reflects current research and best practices relating to the skills necessary for caregivers, teachers, and directors to meet the developmental needs of participating children and engage families, including culturally and linguistically appropriate practices; and

(7) Improves the quality, diversity, stability, and retention (including financial incentives and compensation improvements) of caregivers, teachers, and directors.

(b) The Lead Agency must describe in the Plan its established requirements for pre-service or orientation (to be completed within three months) and ongoing professional development for caregivers, teachers, and directors of child care providers of services for which assistance is provided under the

CCDF that, to the extent practicable, align with the State framework:

(1) Accessible pre-service or orientation training in health and safety standards appropriate to the setting and age of children served that addresses:

(i) Each of the requirements relating to matters described in § 98.41(a)(1)(i) through (xi) and specifying critical health and safety training that must be completed before caregivers, teachers, and directors are allowed to care for children unsupervised;

(ii) At the Lead Agency option, matters described in § 98.41(a)(1)(xii); and

(iii) Child development, including the major domains (cognitive, social, emotional, physical development and approaches to learning);

(2) Ongoing, accessible professional development, aligned to a progression of professional development, including the minimum annual requirement for hours of training and professional development for eligible caregivers, teachers and directors, appropriate to the setting and age of children served, that:

(i) Maintains and updates health and safety training standards described in § 98.41(a)(1)(i) through (xi), and at the Lead Agency option, in § 98.41(a)(1)(xii);

(ii) Incorporates knowledge and application of the State's early learning and developmental guidelines for children birth to kindergarten (where applicable);

(iii) Incorporates social-emotional behavior intervention models for children birth through school-age, which may include positive behavior intervention and support models including preventing and reducing expulsions and suspensions of preschool-aged and school-aged children;

(iv) To the extent practicable, are appropriate for a population of children that includes:

(A) Different age groups;

(B) English learners;

(C) Children with developmental delays and disabilities; and

(D) Native Americans, including Indians, as the term is defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) (including Alaska Natives within the meaning of that term), and Native Hawaiians (as defined in section 6207 of the Elementary and Secondary Education Act of 1965);

(v) To the extent practicable, awards continuing education units or is credit-bearing; and

(vi) Shall be accessible to caregivers, teachers, and directors supported through Indian tribes or tribal organizations that receive assistance under this subchapter.

■ 25. Revise newly redesignated § 98.45 to read as follows:

§ 98.45 Equal access.

(a) The Lead Agency shall certify that the payment rates for the provision of child care services under this part are sufficient to ensure equal access, for eligible families in the area served by the Lead Agency, to child care services comparable to those provided to families not eligible to receive CCDF assistance or child care assistance under any other Federal, State, or tribal programs.

(b) The Lead Agency shall provide in the Plan a summary of the data and facts relied on to determine that its payment rates ensure equal access. At a minimum, the summary shall include facts showing:

(1) How a choice of the full range of providers is made available, and the extent to which child care providers participate in the CCDF subsidy system and any barriers to participation including barriers related to payment rates and practices, based on information obtained in accordance with paragraph (d)(2) of this section;

(2) How payment rates are adequate and have been established based on the most recent market rate survey or alternative methodology conducted in accordance with paragraph (c) of this section;

(3) How base payment rates enable providers to meet health, safety, quality, and staffing requirements in accordance with paragraphs (f)(1)(ii)(A) and (f)(2)(ii) of this section;

(4) How the Lead Agency took the cost of higher quality into account in accordance with paragraph (f)(2)(iii) of this section, including how payment rates for higher-quality care, as defined by the Lead Agency using a quality rating and improvement system or other system of quality indicators, relate to the estimated cost of care at each level of quality;

(5) How co-payments based on a sliding fee scale are affordable, as stipulated at paragraph (k) of this section; if applicable, a rationale for the Lead Agency's policy on whether child care providers may charge additional amounts to families above the required family co-payment, including a demonstration that the policy promotes affordability and access; analysis of the interaction between any such additional amounts with the required family co-payments, and of the ability of subsidy payment rates to provide access to care without additional fees; and data on the extent to which CCDF providers charge such additional amounts to families (based on information obtained in accordance with paragraph (d)(2) of this section);

(6) How the Lead Agency's payment practices support equal access to a range of providers by providing stability of funding and encouraging more child care providers to serve children receiving CCDF subsidies, in accordance with paragraph (l) of this section;

(7) How and on what factors the Lead Agency differentiates payment rates; and

(8) Any additional facts the Lead Agency considered in determining that its payment rates ensure equal access.

(c) The Lead Agency shall demonstrate in the Plan that it has developed and conducted, not earlier than two years before the date of the submission of the Plan, either:

(1) A statistically valid and reliable survey of the market rates for child care services; or

(2) An alternative methodology, such as a cost estimation model, that has been:

(i) Proposed by the Lead Agency; and

(ii) Approved in advance by ACF.

(d) The Lead Agency must:

(1) Ensure that the market rate survey or alternative methodology reflects variations by geographic location, category of provider, and age of child;

(2) Track through the market rate survey or alternative methodology, or through a separate source, information on the extent to which:

(i) Child care providers are participating in the CCDF subsidy program and any barriers to participation, including barriers related to payment rates and practices; and

(ii) CCDF child care providers charge amounts to families more than the required family co-payment (under paragraph (k) of this section) in instances where the provider's price exceeds the subsidy payment, including data on the size and frequency of any such amounts.

(e) Prior to conducting the market rate survey or alternative methodology, the Lead Agency must consult with:

(1) The State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)) or similar coordinating body, local child care program administrators, local child care resource and referral agencies, and other appropriate entities; and

(2) Organizations representing child care caregivers, teachers, and directors.

(f) After conducting the market rate survey or alternative methodology, the Lead Agency must:

(1) Prepare a detailed report containing the results, and make the report widely available, including by posting it on the Internet, not later than 30 days after the completion of the report.

The report must include:

(i) The results of the market rate survey or alternative methodology;

(ii) The estimated cost of care necessary (including any relevant variation by geographic location, category of provider, or age of child) to support:

(A) Child care providers' implementation of the health, safety, quality, and staffing requirements at §§ 98.41 through 98.44; and

(B) Higher-quality care, as defined by the Lead Agency using a quality rating and improvement system or other system of quality indicators, at each level of quality; and

(iii) The Lead Agency's response to stakeholder views and comments.

(2) Set payment rates for CCDF assistance:

(i) In accordance with the results of the most recent market rate survey or alternative methodology conducted pursuant to paragraph (c) of this section;

(ii) With base payment rates established at least at a level sufficient for child care providers to meet health, safety quality, and staffing requirements in accordance with paragraph (f)(1)(ii)(A) of this section;

(iii) Taking into consideration the cost of providing higher-quality child care services, including consideration of the information at each level of higher quality required by paragraph (f)(1)(ii)(B) of this section;

(iv) Taking into consideration the views and comments of the public obtained in accordance with paragraph (e) and through other processes determined by the Lead Agency; and

(v) Without, to the extent practicable, reducing the number of families receiving CCDF assistance.

(g) A Lead Agency may not establish different payment rates based on a family's eligibility status, such as TANF status.

(h) Payment rates under paragraph (a) of this section shall be consistent with the parental requirements in § 98.30

(i) Nothing in this section shall be construed to create a private right of action if the Lead Agency acts in accordance with the Act and this part.

(j) Nothing in this part shall be construed to prevent a Lead Agency from differentiating payment rates on the basis of such factors as:

(1) Geographic location of child care providers (such as location in an urban or rural area);

(2) Age or particular needs of children (such as the needs of children with disabilities, children served by child protective services, and children experiencing homelessness);

(3) Whether child care providers provide services during the weekend or other non-traditional hours; or

(4) The Lead Agency's determination that such differential payment rates may enable a parent to choose high-quality child care that best fits the parents' needs.

(k) Lead Agencies shall establish, and periodically revise, by rule, a sliding fee scale(s) for families that receive CCDF child care services that:

(1) Helps families afford child care and enables choice of a range of child care options;

(2) Is based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of subsidy payment;

(3) Provides for affordable family co-payments that are not a barrier to families receiving assistance under this part; and

(4) At Lead Agency discretion, allows for co-payments to be waived for families whose incomes are at or below the poverty level for a family of the same size, that have children who receive or need to receive protective services, or that meet other criteria established by the Lead Agency.

(l) The Lead Agency shall demonstrate in the Plan that it has established payment practices applicable to all CCDF child care providers that:

(1) Ensure timeliness of payment by either:

(i) Paying prospectively prior to the delivery of services; or

(ii) Paying within no more than 21 calendar days of the receipt of a complete invoice for services.

(2) To the extent practicable, support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences by:

(i) Paying based on a child's enrollment rather than attendance;

(ii) Providing full payment if a child attends at least 85 percent of the authorized time;

(iii) Providing full payment if a child is absent for five or fewer days in a month; or

(iv) An alternative approach for which the Lead Agency provides a justification in its Plan.

(3) Reflect generally-accepted payment practices of child care providers that serve children who do not receive CCDF subsidies, which must include (unless the Lead Agency provides evidence in the Plan that such practices are not generally-accepted in the State or service area):

(i) Paying on a part-time or full-time basis (rather than paying for hours of service or smaller increments of time); and

(ii) Paying for reasonable mandatory registration fees that the provider charges to private-paying parents:

(4) Ensure child care providers receive payment for any services in accordance with a written payment agreement or authorization for services that includes, at a minimum, information regarding provider payment policies, including rates, schedules, any fees charged to providers, and the dispute resolution process required by paragraph (l)(6);

(5) Ensure child care providers receive prompt notice of changes to a family's eligibility status that may impact payment, and that such notice is sent to providers no later than the day the Lead Agency becomes aware that such a change will occur;

(6) Include timely appeal and resolution processes for any payment inaccuracies and disputes.

■ 26. Revise newly redesignated § 98.46 to read as follows:

§ 98.46 Priority for child care services.

(a) Lead Agencies shall give priority for services provided under § 98.50(a) to:

(1) Children of families with very low family income (considering family size);

(2) Children with special needs, which may include any vulnerable populations as defined by the Lead Agency; and

(3) Children experiencing homelessness.

(b) Lead Agencies shall prioritize increasing access to high-quality child care and development services for children of families in areas that have significant concentrations of poverty and unemployment and that do not have a sufficient number of such programs.

■ 27. Revise § 98.50 to read as follows:

§ 98.50 Child care services.

(a) Direct child care services shall be provided:

(1) To eligible children, as described in § 98.20;

(2) Using a sliding fee scale, as described in § 98.45(k);

(3) Using funding methods provided for in § 98.30; and

(4) Based on the priorities in § 98.46.

(b) Of the aggregate amount of funds expended by a State or Territory (*i.e.*, Discretionary, Mandatory, and Federal and State share of Matching funds):

(1) No less than seven percent in fiscal years 2016 and 2017, eight percent in fiscal years 2018 and 2019, and nine percent in fiscal year 2020 and each succeeding fiscal year shall be used for activities designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care as described at § 98.53; and

(2) No less than three percent in fiscal year 2017 and each succeeding fiscal year shall be used to carry out activities at § 98.53(a)(4) as such activities relate to the quality of care for infants and toddlers.

(3) Nothing in this section shall preclude the State or Territory from reserving a larger percentage of funds to carry out activities described in paragraphs (b)(1) and (2) of this section.

(c) Funds expended from each fiscal year's allotment on quality activities pursuant to paragraph (b) of this section:

(1) Must be in alignment with an assessment of the Lead Agency's need to carry out such services and care as required at § 98.53(a);

(2) Must include measurable indicators of progress in accordance with § 98.53(f); and

(3) May be provided directly by the Lead Agency or through grants or contracts with local child care resource and referral organizations or other appropriate entities.

(d) Of the aggregate amount of funds expended (*i.e.*, Discretionary, Mandatory, and Federal and State share of Matching Funds), no more than five percent may be used for administrative activities as described at § 98.54.

(e) Not less than 70 percent of the Mandatory and Federal and State share of Matching Funds shall be used to meet the child care needs of families who:

(1) Are receiving assistance under a State program under Part A of title IV of the Social Security Act;

(2) Are attempting through work activities to transition off such assistance program; and

(3) Are at risk of becoming dependent on such assistance program.

(f) From Discretionary amounts provided for a fiscal year, the Lead Agency shall:

(1) Reserve the minimum amount required under paragraph (b) of this section for quality activities, and the funds for administrative costs described at paragraph (d) of this section; and

(2) From the remainder, use not less than 70 percent to fund direct services (provided by the Lead Agency).

(g) Of the funds remaining after applying the provisions of paragraphs (a) through (f) of this section, the Lead Agency shall spend a substantial portion of funds to provide direct child care services to low-income families who are working or attending training or education.

(h) Pursuant to § 98.16(i)(4), the Plan shall specify how the State will meet the child care needs of families described in paragraph (e) of this section.

§§ 98.51 through 98.55 [Redesignated as §§ 98.53 through 98.57]

■ 28. Redesignate §§ 98.51 through 98.55 of subpart F as §§ 98.53 through 98.57.

■ 29. Add new § 98.51 to subpart F to read as follows:

§ 98.51 Services for children experiencing homelessness.

Lead Agencies shall expend funds on activities that improve access to quality child care services for children experiencing homelessness, including:

(a) The use of procedures to permit enrollment (after an initial eligibility determination) of children experiencing homelessness while required documentation is obtained;

(1) If, after full documentation is provided, a family experiencing homelessness is found ineligible,

(i) The Lead Agency shall pay any amount owed to a child care provider for services provided as a result of the initial eligibility determination; and

(ii) Any CCDF payment made prior to the final eligibility determination shall not be considered an error or improper payment under subpart K of this part;

(2) [Reserved]

(b) Training and technical assistance for providers and appropriate Lead Agency (or designated entity) staff on identifying and serving children experiencing homelessness and their families; and

(c) Specific outreach to families experiencing homelessness.

■ 30. Add new § 98.52 to subpart F to read as follows:

§ 98.52 Child care resource and referral system.

(a) A Lead Agency may expend funds to establish or support a system of local or regional child care resource and referral organizations that is coordinated, to the extent determined appropriate by the Lead Agency, by a statewide public or private nonprofit, community-based or regionally based, lead child care resource and referral organization.

(b) If a Lead Agency uses funds as described in paragraph (a) of this section, the local or regional child care resource and referral organizations supported shall, at the direction of the Lead Agency:

(1) Provide parents in the State with consumer education information referred to in § 98.33 (except as otherwise provided in that paragraph), concerning the full range of child care options (including faith-based and community-based child care providers), analyzed by provider, including child care provided during nontraditional hours and through emergency child care centers, in their political subdivisions or regions;

(2) To the extent practicable, work directly with families who receive assistance under this subchapter to offer the families support and assistance, using information described in paragraph (b)(1) of this section, to make an informed decision about which child care providers they will use, in an effort to ensure that the families are enrolling their children in the most appropriate child care setting to suit their needs and one that is of high quality (as determined by the Lead Agency);

(3) Collect data and provide information on the coordination of services and supports, including services under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431, *et seq.*), for children with disabilities (as defined in section 602 of such Act (20 U.S.C. 1401));

(4) Collect data and provide information on the supply of and demand for child care services in political subdivisions or regions within the State and submit such information to the State;

(5) Work to establish partnerships with public agencies and private entities, including faith-based and community-based child care providers, to increase the supply and quality of child care services in the State; and

(6) As appropriate, coordinate their activities with the activities of the State Lead Agency and local agencies that administer funds made available in accordance with this part.

■ 31. Revise newly redesignated § 98.53 to read as follows:

§ 98.53 Activities to improve the quality of child care.

(a) The Lead Agency must expend funds from each fiscal year's allotment on quality activities pursuant to §§ 98.50(b) and 98.83(g) in accordance with an assessment of need by the Lead Agency. Such funds must be used to carry out at least one of the following quality activities to improve the quality of child care services for all children, regardless of CCDF receipt, in accordance with paragraph (d) of this section:

(1) Supporting the training, professional development, and postsecondary education of the child care workforce as part of a progression of professional development through activities such as those included at § 98.44, in addition to:

(i) Offering training, professional development, and postsecondary education opportunities for child care caregivers, teachers and directors that:

(A) Relate to the use of scientifically based, developmentally-appropriate, culturally-appropriate, and age-appropriate strategies to promote the social, emotional, physical, and cognitive development of children, including those related to nutrition and physical activity; and

(B) Offer specialized training, professional development, and postsecondary education for caregivers, teachers and directors caring for those populations prioritized at § 98.44(b)(2)(iv), and children with disabilities;

(ii) Incorporating the effective use of data to guide program improvement and improve opportunities for caregivers, teachers and directors to advance on their progression of training, professional development, and postsecondary education;

(iii) Including effective, age-appropriate behavior management strategies and training, including positive behavior interventions and support models for birth to school-age, that promote positive social and emotional development and reduce challenging behaviors, including reducing suspensions and expulsions of children under age five for such behaviors;

(iv) Providing training and outreach on engaging parents and families in culturally and linguistically appropriate ways to expand their knowledge, skills, and capacity to become meaningful partners in supporting their children's positive development;

(v) Providing training corresponding to the nutritional and physical activity needs of children to promote healthy development;

(vi) Providing training or professional development for caregivers, teachers and directors regarding the early neurological development of children; and

(vii) Connecting child care caregivers, teachers, and directors with available Federal and State financial aid that would assist these individuals in pursuing relevant postsecondary education, or delivering financial resources directly through programs that provide scholarships and compensation improvements for education attainment and retention.

(2) Improving upon the development or implementation of the early learning and development guidelines at § 98.15(a)(9) by providing technical assistance to eligible child care providers in order to enhance the cognitive, physical, social, and emotional development and overall well-being of participating children.

(3) Developing, implementing, or enhancing a tiered quality rating and improvement system for child care providers and services to meet consumer education requirements at § 98.33, which may:

(i) Support and assess the quality of child care providers in the State, Territory, or Tribe;

(ii) Build on licensing standards and other regulatory standards for such providers;

(iii) Be designed to improve the quality of different types of child care providers and services;

(iv) Describe the safety of child care facilities;

(v) Build the capacity of early childhood programs and communities to promote parents' and families' understanding of the early childhood system and the rating of the program in which the child is enrolled;

(vi) Provide, to the maximum extent practicable, financial incentives and other supports designed to expand the full diversity of child care options and help child care providers improve the quality of services; and

(vii) Accommodate a variety of distinctive approaches to early childhood education and care, including but not limited to, those practiced in faith-based settings, community-based settings, child centered settings, or similar settings that offer a distinctive approach to early childhood development.

(4) Improving the supply and quality of child care programs and services for infants and toddlers through activities, which may include:

(i) Establishing or expanding high-quality community or neighborhood based family and child development centers, which may serve as resources to child care providers in order to improve the quality of early childhood services provided to infants and toddlers from low-income families and to help eligible child care providers improve their capacity to offer high-quality, age-appropriate care to infants and toddlers from low-income families;

(ii) Establishing or expanding the operation of community or neighborhood-based family child care networks;

(iii) Promoting and expanding child care providers' ability to provide developmentally appropriate services for infants and toddlers through, but not limited to:

(A) Training and professional development for caregivers, teachers and directors, including coaching and technical assistance on this age group's unique needs from statewide networks of qualified infant-toddler specialists; and

(B) Improved coordination with early intervention specialists who provide services for infants and toddlers with disabilities under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431. *et seq.*);

(iv) If applicable, developing infant and toddler components within the Lead Agency's quality rating and improvement system described in paragraph (a)(3) of this section for child care providers for infants and toddlers, or the development of infant and toddler components in the child care licensing regulations or early learning and development guidelines;

(v) Improving the ability of parents to access transparent and easy to understand consumer information about high-quality infant and toddler care as described at § 98.33; and

(vi) Carrying out other activities determined by the Lead Agency to improve the quality of infant and toddler care provided, and for which there is evidence that the activities will lead to improved infant and toddler health and safety, infant and toddler cognitive and physical development, or infant and toddler well-being, including providing health and safety training (including training in safe sleep practices, first aid, and cardiopulmonary resuscitation for providers and caregivers.

(5) Establishing or expanding a statewide system of child care resource and referral services.

(6) Facilitating compliance with Lead Agency requirements for inspection, monitoring, training, and health and safety, and with licensing standards.

(7) Evaluating and assessing the quality and effectiveness of child care programs and services offered, including evaluating how such programs positively impact children.

(8) Supporting child care providers in the voluntary pursuit of accreditation by a national accrediting body with demonstrated, valid, and reliable program standards of high-quality.

(9) Supporting Lead Agency or local efforts to develop or adopt high-quality program standards relating to health, mental health, nutrition, physical activity, and physical development.

(10) Carrying out other activities, including implementing consumer education provisions at § 98.33, determined by the Lead Agency to improve the quality of child care services provided, and for which measurement of outcomes relating to improvement of provider preparedness, child safety, child well-being, or entry to kindergarten is possible.

(b) Pursuant to § 98.16(j), the Lead Agency shall describe in its Plan the activities it will fund under this section.

(c) Non-Federal expenditures required by § 98.55(c) (*i.e.*, the maintenance-of effort amount) are not subject to the requirement at paragraph (a) of this section.

(d) Activities to improve the quality of child care services are not restricted to activities affecting children meeting eligibility requirements under § 98.20 or to child care providers of services for which assistance is provided under this part.

(e) Unless expressly authorized by law, targeted funds for quality improvement and other set asides that may be included in appropriations law may not be used towards meeting the quality expenditure minimum requirement at § 98.50(b).

(f) States shall annually prepare and submit reports, including a quality progress report and expenditure report, to the Secretary, which must be made publicly available and shall include:

(1) An assurance that the State was in compliance with requirements at § 98.50(b) in the preceding fiscal year and information about the amount of funds reserved for that purpose;

(2) A description of the activities carried out under this section to comply with § 98.50(b);

(3) The measures the State will use to evaluate its progress in improving the quality of child care programs and services in the State, and data on the extent to which the State had met these measures;

(4) A report describing any changes to State regulations, enforcement mechanisms, or other State policies addressing health and safety based on an annual review and assessment of serious child injuries and any deaths occurring in child care programs serving children receiving assistance under this part, and in other regulated and unregulated child care centers and family child care homes, to the extent possible; and

(5) A description of how the Lead Agency responded to complaints submitted through the national hotline and Web site, required in section 658L(b) of the CCDBG Act (42 U.S.C. 9858j(b)).

■ 32. Amend newly redesignated § 98.54 as follows:

■ a. Revise paragraphs (a) introductory text and (a)(6);

■ b. Redesignate paragraphs (b) and (c) as (c) and (d), respectively;

■ c. Add new paragraph (b);

■ d. Revise newly redesignated paragraph (d); and

■ e. Add paragraph (e).

The revisions and additions read as follows:

§ 98.54 Administrative costs.

(a) Not more than five percent of the aggregate funds expended by the Lead Agency from each fiscal year's allotment, including the amounts expended in the State pursuant to § 98.55(b), shall be expended for administrative activities. These activities may include but are not limited to:

* * * * *

(6) Indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to § 98.57.

(b) The following activities do not count towards the five percent limitation on administrative expenditures in paragraph (a) of this section:

(1) Establishment and maintenance of computerized child care information systems;

(2) Establishing and operating a certificate program;

(3) Eligibility determination and redetermination;

(4) Preparation/participation in judicial hearings;

(5) Child care placement;

(6) Recruitment, licensing, inspection of child care providers;

(7) Training for Lead Agency or sub recipient staff on billing and claims processes associated with the subsidy program;

(8) Reviews and supervision of child care placements;

(9) Activities associated with payment rate setting;

(10) Resource and referral services; and

(11) Training for child care staff.

* * * * *

(d) Non-Federal expenditures required by § 98.55(c) (*i.e.*, the maintenance-of-effort amount) are not subject to the five percent limitation at paragraph (a) of this section.

(e) If a Lead Agency enters into agreements with sub-recipients for operation of the CCDF program, the amount of the contract or grant attributable to administrative activities as described in this section shall be counted towards the five percent limit.

■ 33. In newly redesignated § 98.55, revise paragraphs (e)(2)(iv), (f), (g)(2), and (h)(2) to read as follows:

§ 98.55 Matching Fund requirements.

* * * * *

(e) * * *

(2) * * *

(iv) Shall be certified both by the Lead Agency and by the donor (if funds are donated directly to the Lead Agency) or the Lead Agency and the entity designated by the State to receive donated funds pursuant to paragraph (f) of this section (if funds are donated directly to the designated entity) as available and representing funds eligible for Federal match; and

* * * * *

(f) Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal match under this section. They may be given to the public or private entities designated by the State to implement the child care program in accordance with § 98.11 provided that such entities are identified and designated in the State Plan to receive donated funds in accordance with § 98.16(d)(2).

(g) * * *

(2) Family contributions to the cost of care as required by § 98.45(k).

(h) * * *

(2) May be eligible for Federal match if the State includes in its Plan, as provided in § 98.16(w), a description of the efforts it will undertake to ensure that pre-K programs meet the needs of working parents.

* * * * *

■ 34. In newly redesignated § 98.56, add a sentence to the end of paragraph (b)(1) and revise paragraphs (d) and (e) to read as follows:

§ 98.56 Restrictions on the use of funds.

* * * * *

(b) * * *

(1) * * * Improvements or upgrades to a facility which are not specified under the definitions of construction or major renovation at § 98.2 may be considered minor remodeling and are, therefore, not prohibited.

* * * * *

(d) *Sectarian purposes and activities.* Funds provided under grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. Assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for sectarian purposes or

activities, including sectarian worship or instruction when provided as part of the child care services.

(e) *Non-Federal share for other Federal programs.* The CCDF may not be used as the non-Federal share for other Federal grant programs, unless explicitly authorized by statute.

■ 35. Amend § 98.60 as follows:

■ a. Revise paragraphs (b) introductory text, (b)(1), (d)(2)(i), (d)(4)(ii), and (d)(6) introductory text;

■ b. Redesignate paragraph (d)(7) as (d)(8);

■ c. Add new paragraph (d)(7); and

■ d. Revise paragraph (h).

The revisions and addition read as follows:

§ 98.60 Availability of funds.

* * * * *

(b) Subject to the availability of appropriations, in accordance with relevant statutory provisions and the apportionment of funds from the Office of Management and Budget, the Secretary:

(1) May withhold a portion of the CCDF funds made available for a fiscal year for the provision of technical assistance, for research, evaluation, and demonstration, and for a national toll free hotline and Web site;

* * * * *

(d) * * *

(2)(i) Mandatory Funds for States requesting Matching Funds per § 98.55 shall be obligated in the fiscal year in which the funds are granted and are available until expended.

* * * * *

(4) * * *

(ii) If there is no applicable State or local law, the regulation at 45 CFR 75.2, Expenditures and Obligations.

* * * * *

(6) In instances where the Lead Agency issues child care certificates, funds for child care services provided through a child care certificate will be considered obligated when a child care certificate is issued to a family in writing that indicates:

* * * * *

(7) In instances where third party agencies issue child care certificates, the obligation of funds occurs upon entering into agreement through a subgrant or contract with such agency, rather than when the third party issues certificates to a family.

* * * * *

(h) Repayment of loans made to child care providers as part of a quality improvement activity pursuant to § 98.53, may be made in cash or in services provided in-kind. Payment provided in-kind shall be based on fair market value. All loans shall be fully repaid.

* * * * *

■ 36. In § 98.61, revise paragraph (a) and paragraph (c) introductory text and add paragraph (f) to read as follows:

§ 98.61 Allotments from the Discretionary Fund.

(a) To the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico an amount equal to the funds appropriated for the Child Care and Development Block Grant, less amounts reserved for technical assistance, research, and the national hotline and Web site, pursuant to § 98.60(b), and amounts reserved for the Territories and Tribes, pursuant to § 98.60(b) and paragraphs (b) and (c) of this section, shall be allotted based upon the formula specified in section 658O(b) of the Act (42 U.S.C. 9858m(b)).

* * * * *

(c) For Indian Tribes and tribal organizations, including any Alaskan Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) not less than two percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

* * * * *

(f) Lead Agencies shall expend any funds that may be set-aside for targeted activities pursuant to annual appropriations law as directed by the Secretary.

■ 37. In § 98.63, revise paragraphs (b) and (c) to read as follows:

§ 98.63 Allotments from the Matching Fund.

* * * * *

(b) For purposes of this section, the amounts available under section 418(a)(3) of the Social Security Act (42 U.S.C. 618(a)(3)) excludes the amounts reserved and allocated under § 98.60(b)(1) for technical assistance, research and evaluation, and the national toll-free hotline and Web site and under § 98.62(a) and (b) for the Mandatory Fund.

(c) Amounts under this section are available pursuant to the requirements at § 98.55(c).

■ 38. In § 98.64, revise paragraph (c)(1) to read as follows:

§ 98.64 Reallotment and redistribution of funds.

* * * * *

(c)(1) Any portion of the Matching Fund granted to a State that is not obligated in the period for which the grant is made shall be redistributed. Funds, if any, will be redistributed on the request of, and only to, those other States that have met the requirements of § 98.55(c) in the period for which the grant was first made. For purposes of this paragraph (c)(1), the term "State" means the 50 States and the District of Columbia. Territorial and tribal grantees may not receive redistributed Matching Funds.

* * * * *

■ 39. In § 98.65, revise paragraphs (a) and (g) and to add paragraphs (h) and (i) to read as follows:

§ 98.65 Audits and financial reporting.

(a) Each Lead Agency shall have an audit conducted after the close of each program period in accordance with 45 CFR part 75, subpart F, and the Single Audit Act Amendments of 1996.

* * * * *

(g) Lead Agencies shall submit financial reports, in a manner specified by ACF, quarterly for each fiscal year until funds are expended.

(h) At a minimum, a State or territorial Lead Agency's quarterly report shall include the following information on expenditures under CCDF grant funds, including Discretionary (which includes realloted funding and any funds transferred from the TANF block grant), Mandatory, and Matching Funds (which includes redistributed funding); and State Matching and Maintenance-of-Effort (MOE) Funds:

(1) Child care administration;

(2) Quality activities, including any sub-categories of quality activities as required by ACF;

(3) Direct services;

(4) Non-direct services, including:

(i) Establishment and maintenance of computerized child care information systems;

(ii) Certificate program cost/eligibility determination;

(iii) All other non-direct services; and

(5) Such other information as specified by the Secretary.

(i) Tribal Lead Agencies shall submit financial reports annually in a manner specified by ACF.

■ 40. Add § 98.68 to subpart G to read as follows:

§ 98.68 Program integrity.

(a) Lead Agencies are required to describe in their Plan effective internal controls that are in place to ensure integrity and accountability, while maintaining continuity of services, in the CCDF program. These shall include:

(1) Processes to ensure sound fiscal management;

(2) Processes to identify areas of risk;

(3) Processes to train child care providers and staff of the Lead Agency and other agencies engaged in the administration of CCDF about program requirements and integrity; and

(4) Regular evaluation of internal control activities.

(b) Lead Agencies are required to describe in their Plan the processes that are in place to:

(1) Identify fraud or other program violations, which may include, but are not limited to the following:

(i) Record matching and database linkages;

(ii) Review of attendance and billing records;

(iii) Quality control or quality assurance reviews; and

(iv) Staff training on monitoring and audit processes.

(2) Investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud.

(c) Lead Agencies must describe in their Plan the procedures that are in place for documenting and verifying that children receiving assistance under this part meet eligibility criteria at the time of eligibility determination and redetermination. Because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible during the period between redeterminations as described in § 98.21(a)(1):

(1) The Lead Agency shall pay any amount owed to a child care provider for services provided for such a child during this period under a payment agreement or authorization for services; and

(2) Any CCDF payment made for such a child during this period shall not be considered an error or improper payment under subpart K of this part due to a change in the family's circumstances, as set forth at § 98.21(a).

■ 41. In § 98.70, add paragraph (d) to read as follows:

§ 98.70 Reporting requirements.

* * * * *

(d) State and territorial Lead Agencies shall make the following reports publicly available on a Web site in a timely manner:

(1) Annual administrative data reports under paragraph (b) of this section;

(2) Quarterly financial reports under § 98.65(g); and

(3) Annual quality progress reports under § 98.53(f).

■ 42. Revise § 98.71 to read as follows:

§ 98.71 Content of report.

(a) At a minimum, a State or territorial Lead Agency's quarterly case-level report to the Secretary, as required in § 98.70, shall include the following information on services provided under CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and Maintenance-of-Effort (MOE) Funds:

(1) The total monthly family income and family size used for determining eligibility;

(2) Zip code of residence of the family and zip code of the location of the child care provider;

(3) Gender and month/year of birth of children;

(4) Ethnicity and race of children;

(5) Whether the head of the family is a single parent

(6) The sources of family income and assistance from employment (including self-employment), cash or other assistance under the Temporary Assistance for Needy Families program under Part A of title IV of the Social Security Act (42 U.S.C. 609(a)(7)), cash or other assistance under a State program for which State spending is counted toward the maintenance of effort requirement under section 409(a)(7) of the Social Security Act, housing assistance, assistance under the Food Stamp Act of 1977, and other assistance programs;

(7) The month/year child care assistance to the family started;

(8) The type(s) of child care in which the child was enrolled (such as family child care, in-home care, or center-based child care;

(9) Whether the child care provider was a relative;

(10) The total monthly child care copayment by the family;

(11) If applicable, any amount charged by the provider to the family more than the required copayment in instances where the provider's price exceeds the subsidy payment;

(12) The total expected dollar amount per month to be received by the provider for each child;

(13) The total hours per month of such care;

(14) Unique identifier of the head of the family unit receiving child care assistance, and of the child care provider;

(15) Reasons for receiving care;

(16) Whether the family is experiencing homelessness;

(17) Whether the parent(s) are in the military service;

(18) Whether the child has a disability;

(19) Primary language spoken at home;

(20) Date of the child care provider's most recent health, safety and fire inspection meeting the requirements of § 98.42(b)(2);

(21) Indicator of the quality of the child care provider; and

(22) Any additional information that the Secretary shall require.

(b) At a minimum, a State or territorial Lead Agency's annual aggregate report to the Secretary, as required in § 98.70(b), shall include the following information on services provided through all CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and MOE Funds:

(1) The number of child care providers that received funding under CCDF as separately identified based on the types of providers listed in section 658P(5) of the amended Child Care and Development Block Grant Act;

(2) The number of children served by payments through certificates or vouchers, contracts or grants, and cash under public benefit programs, listed by the primary type of child care services provided during the last month of the report period (or the last month of service for those children leaving the program before the end of the report period);

(3) The manner in which consumer education information was provided to parents and the number of parents to whom such information was provided;

(4) The total number (without duplication) of children and families served under CCDF;

(5) The number of child fatalities by type of care; and

(6) Any additional information that the Secretary shall require.

(c) A Tribal Lead Agency's annual report as required in § 98.70(c), shall include such information as the Secretary shall require.

■ 43. In § 98.80, revise paragraphs (a) and (c)(1) and (2) and remove paragraph (f).

The revisions read as follows:

§ 98.80 General procedures and requirements.

* * * * *

(a) An Indian Tribe applying for or receiving CCDF funds shall be subject to the requirements under this part as specified in this section based on the size of the awarded funds. The Secretary shall establish thresholds for Tribes' total CCDF allotments pursuant to §§ 98.61(c) and 98.62(b) to be divided into three categories:

(1) Large allocations;

(2) Medium allocations; and

(3) Small allocations.

* * * * *

(c) * * *

(1) The consortium adequately demonstrates that each participating Tribe authorizes the consortium to receive CCDF funds on behalf of each Tribe or tribal organization in the consortium;

(2) The consortium consists of Tribes that each meet the eligibility requirements for the CCDF program as defined in this part, or that would otherwise meet the eligibility requirements if the Tribe or tribal organization had at least 50 children under 13 years of age;

* * * * *

■ 44. In § 98.81, revise paragraphs (b) introductory text, (b)(1), (5), and (6), add paragraph (b)(9), and revise paragraph (c) to read as follows:

§ 98.81 Application and Plan procedures.

* * * * *

(b) Tribal Lead Agencies with large and medium allocations shall submit a CCDF Plan, as described at § 98.16, with the following additions and exceptions:

(1) The Plan shall include the basis for determining family eligibility.

(i) If the Tribe's median income is below a certain level established by the Secretary, then, at the Tribe's option, any Indian child in the Tribe's service area shall be considered eligible to receive CCDF funds, regardless of the family's income, work, or training status, provided that provision for services still goes to those with the highest need.

(ii) If the Tribe's median income is above the level established by the Secretary, then a tribal program must determine eligibility for services pursuant to § 98.20(a)(2). A tribal program, as specified in its Plan, may use either:

(A) 85 percent of the State median income for a family of the same size; or

(B) 85 percent of the median income for a family of the same size residing in the area served by the Tribal Lead Agency.

* * * * *

(5) The Plan shall include a description of the Tribe's payment rates, how they are established, and how they support quality including, where applicable, cultural and linguistic appropriateness.

(6) The Plan is not subject to the following requirements:

(i) The early learning and developmental guidelines requirement ·t § 98.15(a)(9);

(ii) The certification to develop the DF Plan in consultation with the ? Advisory Council at § 98.15(b)(1);

(iii) The licensing requirements applicable to child care services at § 98.15(b)(6) and § 98.16(u);

(iv) The identification of the public or private entities designated to receive private funds at § 98.16(d)(2);

(v) A definition of very low income at § 98.16(g)(8);

(vi) A description at § 98.16(i)(4) of how the Lead Agency will meet the needs of certain families specified at § 98.50(e);

(vii) The description of the market rate survey or alternative methodology at § 98.16(r);

(viii) The description relating to Matching Funds at § 98.16(w); and

(ix) The description of how the Lead Agency prioritizes increasing access to high-quality child care in areas with high concentration of poverty at § 98.16(y).

* * * * *

(9) Plans for Tribal Lead Agencies with medium allocations are not subject to the following requirements unless the Tribe chooses to include such services, and, therefore, the associated requirements, in its program:

(i) The assurance at § 98.15(a)(2) regarding options for services;

(ii) A description of any limits established for the provision of in-home care at § 98.16(i)(2), or

(iii) A description of the child care certificate payment system(s) at § 98.16(q).

(c) Tribal Lead Agencies with small allocations shall submit an abbreviated CCDF Plan, as described by the Secretary.

■ 45. Revise § 98.82 to read as follows:

§ 98.82 Coordination.

Tribal applicants shall coordinate the development of the Plan and the provision of services, to the extent practicable, as required by §§ 98.12 and 98.14 and:

(a) To the maximum extent feasible, with the Lead Agency in the State or States in which the applicant will carry out the CCDF program; and

(b) With other Federal, State, local, and tribal child care and childhood development programs.

■ 46. Revise § 98.83 to read as follows:

§ 98.83 Requirements for tribal programs.

(a) The grantee shall designate an agency, department, or unit to act as the Tribal Lead Agency to administer the CCDF program.

(b) With the exception of Alaska, California, and Oklahoma, programs and activities for the benefit of Indian children shall be carried out on or near an Indian reservation.

(c) In the case of a tribal grantee that is a consortium:

(1) A brief description of the direct child care services funded by CCDF for each of their participating Tribes shall be provided by the consortium in their three-year CCDF Plan; and

(2) Variations in CCDF programs or requirements and in child care licensing, regulatory and health and safety requirements shall be specified in written agreements between the consortium and the Tribe.

(3) If a Tribe elects to participate in a consortium arrangement to receive one part of the CCDF (*e.g.*, Discretionary Funds), it may not join another consortium or apply as a direct grantee to receive the other part of the CCDF (*e.g.*, Tribal Mandatory Funds).

(4) If a Tribe relinquishes its membership in a consortium at any time during the fiscal year, CCDF funds awarded on behalf of the member Tribe will remain with the tribal consortium to provide direct child care services to other consortium members for that fiscal year.

(d)(1) Tribal Lead Agencies shall not be subject to:

(i) The requirement to produce a consumer education Web site at § 98.33(a). Tribal Lead Agencies still must collect and disseminate the provider-specific consumer education information described at § 98.33(a) through (d), but may do so using methods other than a Web site;

(ii) The requirement to have licensing applicable to child care services at § 98.40;

(iii) The requirement for a training and professional development framework at § 98.44(a);

(iv) The market rate survey or alternative methodology described at § 98.45(b)(2) and the related requirements at § 98.45(c), (d), (e), and (f);

(v) The requirement that Lead Agencies shall give priority for services to children of families with very low family income at § 98.46(a)(1);

(vi) The requirement that Lead Agencies shall prioritize increasing access to high-quality child care in areas with significant concentrations of poverty and unemployment at § 98.46(b);

(vii) The requirements about Mandatory and Matching Funds at § 98.50(e);

(vii) The requirement to complete the quality progress report at § 98.53(f);

(xi) The requirement that Lead Agencies shall expend no more than five percent from each year's allotment on administrative costs at § 98.54(a); and

(x) The Matching Fund requirements at §§ 98.55 and 98.63.

(2) Tribal Lead Agencies with large, medium, and small allocations shall be subject to the provision at § 98.42(b)(2) to require inspections of child care providers and facilities, unless a Tribal Lead Agency describes an alternative monitoring approach in its Plan and provides adequate justification for the approach.

(3) Tribal Lead Agencies with large, medium, and small allocations shall be subject to the requirement at § 98.43 to conduct comprehensive criminal background checks, unless the Tribal Lead Agency describes an alternative background check approach in its Plan and provides adequate justification for the approach.

(e) Tribal Lead Agencies with medium and small allocations shall not be subject to the requirement for certificates at § 98.30(a) and (d).

(f) Tribal Lead Agencies with small allocations must spend their CCDF funds in alignment with the goals and purposes described in § 98.1. These Tribes shall have flexibility in how they spend their CCDF funds and shall be subject to the following requirements:

(1) The health and safety requirements described in § 98.41;

(2) The monitoring requirements at §§ 98.42 and 98.83(d)(2); and

(3) The background checks requirements described in §§ 98.43 and 98.83(d)(3);

(4) The requirements to spend funds on activities to improve the quality of child care described in §§ 98.83(g) and 98.53;

(5) The use of funds requirements at § 98.56 and cost allocation requirement at § 98.57;

(6) The financial management requirements at subpart G of this part that are applicable to Tribes;

(7) The reporting requirements at subpart H of this part that are applicable to Tribes;

(8) The eligibility definitions at § 98.81(b)(2);

(9) The 15 percent limitation on administrative activities at § 98.83(i);

(10) The monitoring, non-compliance, and complaint provisions at subpart J of this part; and

(11) Any other requirement established by the Secretary.

(g) Of the aggregated amount of funds expanded (*i.e.*, Discretionary and Mandatory Funds),

(1) For Tribal Lead Agencies with large, medium and small allocations, no less than four percent in fiscal years 2017, seven percent in fiscal years 2018 and 2019, eight percent in fiscal years 2020 and 2021, and nine percent in fiscal years 2022 and each succeeding fiscal year shall be used for activities designed to improve the quality of child care services and increase parental options for, and access to high-quality child care as described at § 98.53; and

(2) For Tribal Lead Agencies with large and medium allocations no less than three percent in fiscal year 2019 and each succeeding fiscal year shall be used to carry out activities at § 98.53(a)(4) as such activities relate to the quality of care for infants and toddler.

(3) Nothing in this section shall preclude the Tribal Lead Agencies from reserving a larger percentage of funds to carry out activities described in paragraph (g)(1) and (2) of this section.

(h) The base amount of any tribal grant is not subject to the administrative cost limitation at paragraph (i) of this section, the direct services requirement at § 98.50(f)(2), or the quality expenditure requirement at § 98.53(a). The base amount may be expended for any costs consistent with the purposes and requirements of the CCDF.

(i) Not more than 15 percent of the aggregate CCDF funds expended by the Tribal Lead Agency from each fiscal year's (including amounts used for construction and renovation in accordance with § 98.84, but not including the base amount provided under paragraph (h) of this section) shall be expended for administrative activities. Amounts used for construction and major renovation in accordance with § 98.84 are not considered administrative costs.

(j)(1) CCDF funds are available for costs incurred by the Tribal Lead Agency only after the funds are made available by Congress for Federal obligation unless costs are incurred for planning activities related to the submission of an initial CCDF Plan.

(2) Federal obligation of funds for planning costs, pursuant to paragraph(i)(1) of this section is subject to the actual availability of the appropriation.

■ 47. In § 98.84, add a sentence at the end of paragraph (b)(3), add paragraphs (b)(3)(i) and (ii), and revise paragraphs (d)(1) through (6) to read as follows:

§ 98.84 Construction and renovation of child care facilities.

* * * * *

(b) * * *

(3) * * * The Secretary shall waive this requirement if:

(i) The Secretary determines that the decrease in the level of child care services provided by the Indian tribe or tribal organization is temporary; and

(ii) The Indian tribe or tribal organization submits to the Secretary a plan that demonstrates that after the date on which the construction or renovation is completed:

(A) The level of direct child care services will increase; or

(B) The quality of child care services will improve.

* * * * *

(d) * * *

(1) Federal share requirements and use of property requirements at 45 CFR 75.318;

(2) Transfer and disposition of property requirements at 45 CFR 75.318(c);

(3) Title requirements at 45 CFR 75.318(a);

(4) Cost principles and allowable cost requirements at subpart E of this part;

(5) Program income requirements at 45 CFR 75.307;

(6) Procurement procedures at 45 CFR 92.36; 75.326 through 75.335; and

* * * * *

■ 48. In § 98.92, revise paragraph (a)(1) and add paragraphs (b)(3) and (4) to read as follows:

§ 98.92 Penalties and sanctions.

* * * * *

(a) * * *

(1) The Secretary will disallow any improperly expended funds;

(b) * * *

(3)(i) A penalty of five percent of the funds allotted under § 98.61 (*i.e.*, the Discretionary Funds) for a Fiscal Year shall be withheld for any For Fiscal Year the Secretary determines that the Lead Agency has failed to give priority for service in accordance with § 98.46(a);

(ii) This penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty;

(iii) This penalty will not be applied if the Lead Agency corrects its failure to comply and amends its CCDF Plan within six months of being notified of the failure; and

(iv) The Secretary may waive a penalty for one year in the event of extraordinary circumstances, such as a natural disaster.

(4)(i) A penalty of five percent of the funds allotted under § 98.61 (*i.e.*, the Discretionary Funds) for a Fiscal Year shall be withheld for any Fiscal Year that the Secretary determines that the State, Territory, or Tribe has failed to comply substantially with the criminal background check requirements at § 98.43;

(ii) This penalty will be withheld no earlier than the first full Fiscal Year

following the determination to apply the penalty; and

(iii) This penalty will not be applied if the State, Territory, or Tribe corrects the failure before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary.

* * * * *

§ 98.93 [Amended]

■ 49. In § 98.93(b), remove ", 370 L'Enfant Promenade SW., Washington, DC 20447".

■ 50. In § 98.100, add a sentence at the end of paragraph (d)(2) and revise paragraph (e) to read as follows:

§ 98.100 Error Rate Report.

* * * * *

(d) * * *

(2) * * * Because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible between redeterminations as described in § 98.21(a)(1), any payment for such a child shall not be considered an error or improper payment due to a change in the family's circumstances, as set forth at § 98.21(a) and (b).

(e) *Costs of Preparing the Error Rate Report*—Provided the error rate calculations and reports focus on client eligibility, expenses incurred by the States, the District of Columbia and Puerto Rico in complying with this rule, including preparation of required reports, shall be considered a cost of direct service related to eligibility determination and therefore is not subject to the five percent limitation on CCDF administrative costs pursuant to § 98.54(a).

■ 51. In § 98.102, revise paragraph (a)(5) and to add paragraph (c) to read as follows:

§ 98.102 Content of Error Rate Reports.

(a) * * *

(5) Estimated annual amount of improper payments (which is a projection of the results from the sample to the universe of cases statewide during the 12-month review period) calculated by multiplying the percentage of improper payments by the total dollar amount of child care payments that the State, the District of Columbia or Puerto Rico paid during the 12-month review period;

* * * * *

(c) Any Lead Agency with an improper payment rate that exceeds a threshold established by the Secretary must submit to the Assistant Secretary for approval a comprehensive corrective action plan, as well as subsequent reports describing progress in implementing the plan.

(1) The corrective action plan must be submitted within 60 days of the deadline for submitting the Lead Agency's standard error rate report required by paragraph (b) of this section.

(2) The corrective action plan must include the following:

(i) Identification of a senior accountable official;

(ii) Milestones that clearly identify actions to be taken to reduce improper payments and the individual responsible for completing each action;

(iii) A timeline for completing each action within 1 year of the Assistant Secretary's approval of the plan, and for reducing the improper payment rate below the threshold established by the Secretary; and

(iv) Targets for future improper payment rates.

(3) Subsequent progress reports must be submitted as requested by the Assistant Secretary.

(4) Failure to carry out actions described in the approved corrective action plan will be grounds for a penalty or sanction under § 98.92.

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